
ANNALS

OF

THE CONGRESS OF THE UNITED STATES.

SEVENTH CONGRESS.

THE
DEBATES AND PROCEEDINGS
IN THE



CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

SEVENTH CONGRESS.

COMPRISING THE PERIOD FROM DECEMBER 7, 1801, TO MARCH 3, 1803,
INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

WASHINGTON:

PRINTED AND PUBLISHED BY GALES AND SEATON.

.....
1851.

74 553

PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE FIRST SESSION OF THE SEVENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, DECEMBER 7, 1801.

MONDAY, December 7, 1801.

The first session of the Seventh Congress of the United States commenced this day, conformably to the Constitution, and the Senate assembled at the Capitol in the City of Washington.

PRESENT:

THEODORE FOSTER, from Rhode Island;
NATHANIEL CHIPMAN, from Vermont;
WILLIAM HILL WELLS and SAMUEL WHITE, from Delaware;
JOHN E. HOWARD, from Maryland;
STEVENS THOMPSON MASON and WILSON CARY NICHOLAS, from Virginia;
ABRAHAM BALDWIN, from Georgia;
JOSEPH ANDERSON and WILLIAM COCKE, from Tennessee.

STEPHEN R. BRADLEY, appointed a Senator by the State of Vermont, for the remainder of the term for which their late Senator, Elijah Paine, was appointed; JOHN BRECKENRIDGE, appointed a Senator by the State of Kentucky; CHRISTOPHER ELLERY, appointed a Senator by the State of Rhode Island, for the remainder of the term for which their late Senator, Ray Greene, was appointed; JAMES JACKSON, appointed a Senator by the State of Georgia; GEORGE LOGAN, appointed a Senator by the Executive of the State of Pennsylvania, in the place of their late Senator, Peter Muhlenberg, resigned; SIMEON OLCOTT, appointed a Senator by the State of New Hampshire, for the remainder of the term for which their late Senator, Samuel Livermore, was appointed; URIAH TRACY, appointed a Senator by the State of Connecticut; and ROBERT WRIGHT, appointed a Senator by the State of Maryland, severally produced their credentials, and took their seats in the Senate.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides; and ABRAHAM BALDWIN was chosen.

The PRESIDENT administered the oath, as the law prescribes, to Mr. BRADLEY, Mr. BRECKENRIDGE, Mr. ELLERY, Mr. JACKSON, Mr. OLCOTT, Mr. TRACY, and Mr. WRIGHT, and the affirmation to Mr. LOGAN.

Ordered, That the Secretary wait on the President of the United States and acquaint him that a quorum of the Senate is assembled, and that, in

the absence of the VICE PRESIDENT, they have elected ABRAHAM BALDWIN President of the Senate, *pro tempore*.

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business, and that, in the absence of the Vice President, they have elected ABRAHAM BALDWIN President of the Senate *pro tempore*.

A message from the House of Representatives informed the Senate that a quorum of the House is assembled, and have elected NATHANIEL MACON their Speaker, and are ready to proceed to business.

Ordered, That Messrs. ANDERSON and JACKSON be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

A message from the House of Representatives informed the Senate that the House agree to the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States, and have appointed a committee on their part.

Resolved, That a committee be appointed to join such gentlemen as shall be appointed by the House of Representatives, to take into consideration a statement made this day by the Secretary of the Senate, respecting books and maps purchased in consequence of an act of Congress, passed 24th April, 1800, and to make report of their opinion respecting the future arrangement of said books and maps; and that Messrs. TRACY and NICHOLAS be the committee on the part of the Senate.

Mr. ANDERSON reported, from the joint committee, that they had waited on the President of the United States and acquainted him that a quorum of both Houses is assembled, and that the President of the United States informed the committee that he would make a communication to them by message to-morrow.

TUESDAY, December 8.

JONATHAN DAYTON, and AARON OGDEN, from the State of New Jersey; and JESSE FRANKLIN

SENATE.

President's Message.

DECEMBER, 1801.

from the State of North Carolina, severally attended.

Resolved, That two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

A message from the House of Representatives informed the Senate that the House concur in the resolution of the Senate for the appointment of a joint committee respecting the books and maps purchased in pursuance of an act of Congress, of the 24th of April, 1800, and have appointed a committee on their part. They agree to the resolution of the Senate for the appointment of two Chaplains during the present session.

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the rate usual for the annual charge of such papers.

PRESIDENT'S MESSAGE.

The following Letter and Message were received from the PRESIDENT OF THE UNITED STATES, by Mr. Lewis, his Secretary :

DECEMBER 8, 1801.

SIR: The circumstances under which we find ourselves at this place rendering inconvenient the mode heretofore practised, of making by personal address the first communications between the Legislative and Executive branches, I have adopted that by Message, as used on all subsequent occasions through the session. In doing this I have had principal regard to the convenience of the Legislature, to the economy of their time, to their relief from the embarrassment of immediate answers, on subjects not yet fully before them, and to the benefits thence resulting to the public affairs. Trusting that a procedure founded in these motives will meet their approbation, I beg leave, through you, sir, to communicate the enclosed Message, with the documents accompanying it, to the honorable the Senate, and pray you to accept, for yourself and them, the homage of my high respect and consideration.

TH: JEFFERSON.

THE HON. the PRESIDENT OF THE SENATE.

*Fellow-citizens of the Senate,
and House of Representatives :*

It is a circumstance of sincere gratification to me that, on meeting the great council of our nation, I am able to announce to them, on grounds of reasonable certainty, that the wars and troubles which for so many years afflicted our sister nations, have at length come to an end; and that the communications of peace and commerce are once more opening among them. Whilst we devoutly return thanks to the beneficent Being who has been pleased to breathe into them the spirit of conciliation and forgiveness, we are bound, with peculiar gratitude, to be thankful to Him that our own peace has been preserved through so perilous a season, and ourselves permitted quietly to cultivate the earth, and to practice and improve those arts which tend to increase our comforts. The assurances, indeed, of friendly disposition, received from all the Powers with whom we have principal relations, had inspired a confidence that our peace with them would not have been disturbed. But a cessation of irregularities which had affected the commerce of neutral nations, and of the irritations and injuries produced by them, cannot but add

to this confidence, and strengthens, at the same time, the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of retribution for the past, and new assurances for the future.

Among our Indian neighbors, also, a spirit of peace and friendship generally prevails; and I am happy to inform you that the continued efforts to introduce among them the implements and the practice of husbandry, and of the household arts, have not been without success; that they are becoming more and more sensible of the superiority of this dependence for clothing and subsistence, over the precarious resources of hunting and fishing; and already we are able to announce that, instead of that constant diminution of their numbers, produced by their wars and their wants, some of them begin to experience an increase of population.

To this state of general peace with which we have been blessed, one only exception exists. Tripoli, the least considerable of the Barbary States, had come forward with demands unfounded either in right or in compact, and had permitted itself to denounce war, on our failure to comply before a given day. The style of the demands admitted but one answer. I sent a small squadron of frigates into the Mediterranean, with assurances to that Power of our sincere desire to remain in peace; but with orders to protect our commerce against the threatened attack. The measure was seasonable and salutary. The Bey had already declared war. His cruisers were out. Two had arrived at Gibraltar. Our commerce in the Mediterranean was blockaded, and that of the Atlantic in peril. The arrival of our squadron dispelled the danger. One of the Tripolitan cruisers, having fallen in with and engaged the small schooner *Enterprise*, commanded by Lieutenant Sterret, which had gone as a tender to our larger vessels, was captured, after a heavy slaughter of her men, without the loss of a single one on our part. The bravery exhibited by our citizens on that element will, I trust, be a testimony to the world that it is not the want of that virtue which makes us seek their peace, but a conscientious desire to direct the energies of our nation to the multiplication of the human race, and not to its destruction. Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defence, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offence also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that, in the exercise of this important function confided by the Constitution to the Legislature exclusively, their judgment may form itself on a knowledge and consideration of every circumstance of weight.

I wish I could say that our situation with all the other Barbary States was entirely satisfactory. Discovering that some delays had taken place in the performance of certain articles stipulated by us, I thought it my duty, by immediate measures for fulfilling them, to vindicate to ourselves the right of considering the effect of departure from stipulation on their side. From the papers which will be laid before you, you will be enabled to judge whether our treaties are regarded by them as fixing at all the measure of their demands, or, as guarding from the exercise of force our vessels within their power; and to consider how far it will be safe and expedient to leave our affairs with them in their present posture.

DECEMBER, 1801.

President's Message.

SENATE.

I lay before you the result of the census lately taken of our inhabitants, to a conformity with which we are now to reduce the ensuing ratio of representation and taxation. You will perceive that the increase of numbers, during the last ten years, proceeding in geometrical ratio, promises a duplication in little more than twenty-two years. We contemplate this rapid growth, and the prospect it holds up to us, not with a view to the injuries it may enable us to do to others in some future day, but to the settlement of the extensive country still remaining vacant within our limits, to the multiplication of men susceptible of happiness, educated in the love of order, habituated to self-government, and valuing its blessings above all price.

Other circumstances, combined with the increase of numbers, have produced an augmentation of revenue arising from consumption, in a ratio far beyond that of population alone; and, though the changes in foreign relations now taking place, so desirably for the whole world, may for a season affect this branch of revenue, yet, weighing all probabilities of expense, as well as of income, there is reasonable ground of confidence that we may now safely dispense with all the internal taxes—comprehending excise, stamps, auctions, licenses, carriages, and refined sugars; to which the postage on newspapers may be added, to facilitate the progress of information; and that the remaining sources of revenue will be sufficient to provide for the support of Government, to pay the interest of the public debts, and to discharge the principals within shorter periods than the laws or the general expectation had contemplated. War, indeed, and untoward events, may change this prospect of things, and call for expenses which the imposts could not meet. But sound principles will not justify our taxing the industry of our fellow-citizens to accumulate treasure for wars to happen we know not when, and which might not, perhaps, happen, but from the temptations offered by that treasure.

These views, however, of reducing our burdens, are formed on the expectation that a sensible, and at the same time a salutary, reduction may take place in our habitual expenditures. For this purpose those of the civil government, the army, and navy, will need revisal. When we consider that this Government is charged with the external and mutual relations only of these States; that the States themselves have principal care of our persons, our property, and our reputation, constituting the great field of human concerns, we may well doubt whether our organization is not too complicated, too expensive; whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote. I will cause to be laid before you an essay towards a statement of those who, under public employment of various kinds, draw money from the Treasury, or from our citizens. Time has not permitted a perfect enumeration, the ramifications of office being too multiplied and remote to be completely traced in a first trial. Among those who are dependent on Executive discretion, I have begun the reduction of what was deemed unnecessary. The expenses of diplomatic agency have been considerably diminished. The inspectors of internal revenue, who were found to obstruct the accountability of the institution, have been discontinued. Several agencies, created by Executive authority, on salaries fixed by that also, have been suppressed, and should suggest the expediency of regulating that power by law, so as to subject its exercise to legislative inspection and sanction. Other reformations of the same kind will be pursued with that caution which is requisite, in removing useless things,

not to injure what is retained. But the great mass of public offices is established by law, and therefore by law alone can be abolished. Should the Legislature think it expedient to pass this roll in review, and try all its parts by the test of public utility, they may be assured of every aid and light which Executive information can yield. Considering the general tendency to multiply offices and dependencies, and to increase expense to the ultimate term of burden which the citizen can bear, it behooves us to avail ourselves of every occasion which presents itself for taking off the surcharge; that it never may be seen here that, after leaving to labor the smallest portion of its earnings on which it can subsist, Government shall itself consume the whole residue of what it was instituted to guard.

In our care too of the public contributions entrusted to our direction, it would be prudent to multiply barriers against their dissipation, by appropriating specific sums to every specific purpose susceptible of definition; by disallowing all applications of money varying from the appropriation in object, or transcending it in amount; by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money; and by bringing back to a single department all accountabilities for money, where the examinations may be prompt, efficacious, and uniform.

An account of the receipts and expenditures of the last year, as prepared by the Secretary of the Treasury, will, as usual, be laid before you. The success which has attended the late sales of the public lands shows that, with attention, they may be made an important source of receipt. Among the payments those made in discharge of the principal and interest of the national debt, will show that the public faith has been exactly maintained. To these will be added an estimate of appropriations necessary for the ensuing year. This last will, of course, be affected by such modifications of the system of expense as you shall think proper to adopt.

A statement has been formed by the Secretary of War, on mature consideration, of all the posts and stations where garrisons will be expedient, and of the number of men requisite for each garrison. The whole amount is considerably short of the present Military Establishment. For the surplus no particular use can be pointed out. For defence against invasion their number is as nothing; nor is it conceived needful or safe that a standing army should be kept up in time of peace, for that purpose. Uncertain as we must ever be of the particular point in our circumference where an enemy may choose to invade us, the only force which can be ready at every point, and competent to oppose them, is the body of neighboring citizens, as formed into a militia. On these, collected from the parts most convenient, in numbers proportioned to the invading force, it is best to rely, not only to meet the first attack, but, if it threatens to be permanent, to maintain the defence until regulars may be engaged to relieve them. These considerations render it important that we should, at every session, continue to amend the defects which from time to time show themselves in the laws for regulating the militia, until they are sufficiently perfect: nor should we now, or at any time, separate, until we can say that we have done everything for the militia which we could do were an enemy at our door.

The provision of military stores on hand will be laid before you, that you may judge of the additions still requisite.

With respect to the extent to which our naval prepa-

SENATE.

President's Message.

DECEMBER, 1801.

rations should be carried, some difference of opinion may be expected to appear; but just attention to the circumstances of every part of the Union will doubtless reconcile all. A small force will probably continue to be wanted for actual service in the Mediterranean. Whatever annual sum beyond that you may think proper to appropriate to naval preparations, would perhaps be better employed in providing those articles which may be kept without waste or consumption, and be in readiness when any exigence calls them into use. Progress has been made, as will appear by papers now communicated, in providing materials for seventy-four gun ships, as directed by law.

How far the authority given by the Legislature for procuring and establishing sites for naval purposes, has been perfectly understood and pursued in the execution, admits of some doubt. A statement of the expenses already incurred on that subject is now laid before you. I have, in certain cases, suspended or slackened these expenditures, that the Legislature might determine whether so many yards are necessary as have been contemplated. The works at this place are among those permitted to go on; and five of the seven frigates directed to be laid up, have been brought and laid up here, where, besides the safety of their position, they are under the eye of the Executive Administration, as well as of its agents; and where yourselves also will be guided by your own view in the Legislative provisions respecting them, which may, from time to time, be necessary. They are preserved in such condition, as well the vessels as whatever belongs to them, as to be at all times ready for sea on a short warning. Two others are yet to be laid up, so soon as they shall receive the repairs requisite to put them also into sound condition. As a superintending officer will be necessary at each yard, his duties and emoluments, hitherto fixed by the Executive, will be a more proper subject for legislation. A communication will also be made of our progress in the execution of the law respecting the vessels directed to be sold.

The fortifications of our harbors, more or less advanced, present considerations of great difficulty. While some of them are on a scale sufficiently proportioned to the advantages of their position, to the efficacy of their protection, and the importance of the points within it, others are so extensive, will cost so much in their first erection, so much in their maintenance, and require such a force to garrison them, as to make it questionable what is best now to be done. A statement of those commenced or projected; of the expenses already incurred; and estimates of their future cost, as far as can be foreseen, shall be laid before you, that you may be enabled to judge whether any alteration is necessary in the laws respecting this subject.

Agriculture, manufactures, commerce, and navigation, the four pillars of our prosperity, are then most thriving when left most free to individual enterprise. Protection from casual embarrassments, however, may sometimes be seasonably interposed. If, in the course of your observations or inquiries, they should appear to need any aid within the limits of our Constitutional powers, your sense of their importance is a sufficient assurance they will occupy your attention. We cannot, indeed, but all feel an anxious solicitude for the difficulties under which our carrying trade will soon be placed. How far it can be relieved, otherwise than by time, is a subject of important consideration.

The Judiciary system of the United States, and especially that portion of it recently erected, will, of course, present itself to the contemplation of Congress; and

that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several States, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those which were depending when additional courts and judges were brought in to their aid.

And while on the Judiciary organization, it will be worthy of your consideration whether the protection of the inestimable institution of juries has been extended to all the cases involving the security of our persons and property. Their impartial selection also being essential to their value, we ought further to consider whether that is sufficiently secured in those States where they are named by a marshal depending on Executive will, or designated by the court, or by officers dependent on them.

I cannot omit recommending a revisal of the laws on the subject of naturalization. Considering the ordinary chances of human life, a denial of citizenship under a residence of fourteen years, is a denial to a great proportion of those who ask it; and controls a policy pursued, from their first settlement, by many of these States, and still believed of consequence to their prosperity. And shall we refuse to the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our fathers arriving in this land? Shall oppressed humanity find no asylum on this globe? The Constitution, indeed, has wisely provided that, for admission to certain offices of important trust, a residence shall be required sufficient to develop character and design. But might not the general character and capabilities of a citizen be safely communicated to every one manifesting a bona fide purpose of embarking his life and fortunes permanently with us? with restrictions, perhaps, to guard against the fraudulent usurpation of our flag? an abuse which brings so much embarrassment and loss on the genuine citizen, and so much danger to the nation of being involved in war, that no endeavor should be spared to detect and suppress it.

These, fellow-citizens, are the matters respecting the state of the nation which I have thought of importance to be submitted to your consideration at this time. Some others of less moment, or not yet ready for communication, will be the subject of separate Messages. I am happy in this opportunity of committing the arduous affairs of our Government to the collected wisdom of the Union. Nothing shall be wanting on my part to inform, as far as in my power, the Legislative judgment, nor to carry that judgment into faithful execution. The prudence and temperance of your discussions will promote, within your own walls, that conciliation which so much befriends rational conclusion; and by its example will encourage among our constituents that progress of opinion which is tending to unite them in object and in will. That all should be satisfied with any one order of things, is not to be expected; but I indulge the pleasing persuasion that the great body of our citizens will cordially concur in honest and disinterested efforts, which have for their object to preserve the General and State Governments in their Constitutional form and equilibrium; to maintain peace abroad, and order and obedience to the laws at home; to establish principles and practices of administration favorable to the security of liberty and property, and to reduce expenses to what is necessary for the useful purposes of Government.

TH: JEFFERSON.

DECEMBER 8, 1801.

DECEMBER, 1801.

Proceedings.

SENATE.

The Letter and Message were read, and ordered to be printed for the use of the Senate.

The papers referred to in the Message were in part read, and the Senate adjourned.

WEDNESDAY, December 9.

The reading of the papers referred to in the Message of the President of the United States of the 8th instant, was resumed, and five hundred copies of the Message, together with the papers therein referred to, ordered to be printed for the use of the Senate.

The Senate proceeded to the appointment of a Chaplain to Congress on their part, and the Rev. Mr. GANTT was elected.

THURSDAY, December 10.

Resolved, That James Mathers, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant, and two horses, for the purpose of performing such services as are usually required of the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for the purpose during the session, and for twenty days after.

A message from the House of Representatives informed the Senate that the House have appointed a joint committee on their part for enrolled bills, and desire the appointment of such committee on the part of the Senate.

Resolved, That the Senate do concur in the appointment of a joint committee for enrolled bills, and that Mr. WRIGHT be the committee on the part of the Senate.

FRIDAY, December 11.

JONATHAN MASON, from the State of Massachusetts and JAMES SHEAFE, from the State of New Hampshire, severally attended.

The PRESIDENT laid before the Senate a letter from Samuel Meredith, Treasurer, together with his general, navy, and war accounts, ending 31st December, 1800, 31st March, 30th June, and 30th September, 1801; which were read.

Ordered, That they lie on file.

MONDAY, December 14.

JAMES HILLHOUSE, from the State of Connecticut, and DWIGHT FOSTER, from the State of Massachusetts, severally attended.

A message from the House of Representatives informed the Senate that the House have elected the Reverend WILLIAM PARKINSON a Chaplain to Congress, on their part.

TUESDAY, December 15.

The Senate met, but transacted no business.

WEDNESDAY, December 16.

The PRESIDENT laid before the Senate a letter from the Secretary for the Department of State, with an annual return, ending the 9th instant, con-

taining an abstract of all the returns made by the Collectors of the Customs for the different ports, pursuant to the act for the relief and protection of American seamen, together with abstracts from the communications received from the agents employed in foreign countries for the relief of American seamen; which were read, and ordered to be printed.

A motion was made by Mr. JACKSON, seconded by Mr. NICHOLAS, that it be

Resolved, by the Senate and House of Representatives of the United States, in Congress assembled, That, as a testimony of the high sense they entertain of the nautical skill and gallant conduct of Lieutenant Andrew Sterret, commander of the United States' schooner Enterprize, manifested in an engagement with, and in the capture of, a Tripolitan corsair of superior force, in the Mediterranean sea, fitted out by the Bey of that Regency to harass the trade, capture the vessels, and enslave the citizens of these States: the President of the United States be requested to present Lieutenant Sterret with a sword, with such suitable devices thereon as he shall deem proper, and emblematic of that heroic action; and the mercy extended to a barbarous enemy, who three times struck his colors, and twice recommenced hostilities—an act of humanity, however unmerited, highly honorable to the American flag and nation: and that the President of the United States be also requested to present Lieutenant Lane of the marines, who was with a detachment of that corps, serving on board the Enterprize in that engagement, and contributed, by his and his detachment's gallant conduct, to the success of the day, with a medal, with such suitable devices as the President may deem fit.

Be it further resolved, In consideration of the intrepid behaviour of the crew of the Enterprize, under the orders of their gallant commander, and their receiving no prize money, the corsair being dismantled and released after her capture, that one month's pay over and above the usual allowance, be paid to all the other officers, sailors, and marines, who were actually on board and engaged in that action; for the expenditure of which charge Congress will make the necessary appropriation.

And it was agreed that this motion lie for consideration.

Mr. COCKE presented the petition of Daniel Fox, a soldier of the militia, under the command of General Sevier, in the year 1793, rendered incapable of labor by a nervous complaint, contracted in an expedition against the Cherokee Indians; and praying relief. The petition was read.

Ordered, That it be referred to Messrs. COCKE, ELLERY, and NICHOLAS, to consider and report thereon.

On motion, it was agreed, that the Message of the President of the United States, of the 8th instant, be made the order of the day for to-morrow, to be considered as in a Committee of the Whole.

The PRESIDENT laid before the Senate a letter from SIMON WILLARD, to the Secretary of the Senate, on the subject of compensation for an eight-day clock, purchased by order of the 25th of February last, for the use of the Senate Chamber; which was read and referred to Messrs. JACKSON, J. MASON, and T. FOSTER, to consider and report thereon.

SENATE.

Proceedings.

DECEMBER, 1801.

THURSDAY, December 17.

The PRESIDENT laid before the Senate the report of the Commissioners of the Sinking Fund; which was read and ordered to be printed for the use of the Senate.

The order of the day, on the Message of the President of the United States of the 8th instant, was postponed until to-morrow.

FRIDAY, December 18.

Mr. TRACY, from the joint committee appointed the 7th instant, on a representation respecting the books purchased in pursuance of a resolution of 24th April, 1800, made report; which was read and ordered to lie for consideration.

Mr. COCKE, from the committee appointed on the 16th instant, to consider the petition of Daniel Fox, made report; which was read and re-committed, further to consider and report thereon.

SATURDAY, December 19.

GOUVERNEUR MORRIS, from the State of New York, attended.

THOMAS SUMTER, appointed a Senator by the Legislature of the State of South Carolina, in the place of their late Senator, Charles Pinckney, resigned, produced his credentials, was qualified, and took his seat in the Senate.

MONDAY, December 21.

The credentials of GEORGE LOGAN, appointed a Senator by the Legislature of the State of Pennsylvania, were presented and read; and the affirmation prescribed by law was administered by the President.

The PRESIDENT laid before the Senate a report from the Secretary for the Department of Treasury, in obedience to the directions of the act supplementary to the act entitled "An act to establish the Treasury Department;" which was read, and ordered to be printed.

A message from the House of Representatives informed the Senate that the House have passed a resolution that the Secretary of State be directed to cause to be furnished to each member of the two Houses a copy of the laws of the sixth Congress; in which they desire the concurrence of the Senate.

The Senate took into consideration the report of the joint committee, made on the 18th instant, respecting the books purchased in pursuance of a resolution of Congress of the 24th April, 1800; which report was adopted as amended, and sundry resolutions consequent thereon agreed to.

TUESDAY, December 22.

DAVID STONE, from the State of North Carolina, attended.

The resolution, sent yesterday from the House of Representatives, authorizing the Secretary of State to supply the members of Congress with the fifth volume of the laws, was considered, and postponed for further consideration.

Mr. ANDERSON gave notice that he should, to-morrow, ask leave to bring in a bill for the discharge of Laurance Erb from his confinement.

WEDNESDAY, December 23.

A message from the House of Representatives, informed the Senate that the House have passed a bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, in which they desire the concurrence of the Senate.

The bill was read and ordered to lie on the table.

Agreeably to notice yesterday given, Mr. ANDERSON obtained leave to bring in a bill authorizing the discharge of Laurance Erb from his confinement; which was read and passed to the second reading.

Mr. COCKE, from the committee to whom was re-committed, on the 18th instant, the petition of Daniel Fox, made a further report; which was read and ordered to lie for consideration.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate,
and of the House of Representatives:*

I now enclose sundry documents supplementary to those communicated to you with my Message at the commencement of the session. Two others, of considerable importance, the one relating to our transactions with the Barbary Powers, the other presenting a view of the offices of the Government, shall be communicated as soon as they can be completed.

Dec. 22, 1801.

TH: JEFFERSON.

*Gentlemen of the Senate,
and of the House of Representatives:*

Another return of the census of the State of Maryland is just received from the Marshal of that State, which he desires may be substituted as more correct than the one first returned by him and communicated by me to Congress. This new return, with his letter, is now laid before you.

Dec. 23, 1801.

TH: JEFFERSON.

The Message and papers therein referred to were read, and severally ordered to lie for consideration.

THURSDAY, December 24.

The bill authorizing the discharge of Laurance Erb from his confinement was read the second time, and committed to Messrs. ANDERSON, TRACY, and BRADLEY, to consider and report thereon.

The PRESIDENT laid before the Senate a report of the Postmaster General, in obedience to the "Act to establish the Post Office;" which was read, and ordered to lie for consideration.

The bill, sent from the House of Representatives for concurrence, extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, was read the second time, and the further consideration thereof postponed until Monday next.

MONDAY, December 28.

JOHN EWING COLHOUN, appointed a Senator by the Legislature of the State of South Carolina,

JANUARY, 1802.

Reporting the Debates.

SENATE.

produced his credentials, was qualified, and took his seat in the Senate.

On motion, it was agreed that the bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, which was the order of the day, be postponed to the 12th of January next.

TUESDAY, December 29.

The Senate proceeded to the consideration of Executive business.

WEDNESDAY, December 30.

Mr. TRACY gave notice that he should, to-morrow, ask leave to bring in a bill to carry into effect the appropriations of land in the purchase of the Ohio company, in the Northwestern Territory, for the support of schools and religion, and for other purposes.

THURSDAY, December 31.

Mr. BRECKENRIDGE presented the petition of Isaac Zane, stating that he was made a prisoner at the age of nine years by the Wyandot Indians, with whom he remained until he became of age; had a family by a woman of that nation, and a tract of land was assigned him by the said nation, on a branch of the Great Miami, and which tract of land was ceded to the United States by a recent treaty with the said Wyandot Indians, and praying such relief as may be deemed equitable; and the petition was read, and committed to Messrs. BRECKENRIDGE, TRACY, and OGDEN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House disagree to the resolutions of the Senate respecting the books and maps purchased pursuant to a resolution of Congress of the 24th of April, 1800. They have passed a bill concerning the library for the use of both Houses of Congress, in which they desire the concurrence of the Senate.

The bill was twice read by unanimous consent, and committed to Messrs. TRACY, LOGAN, and DAYTON, to consider and report thereon.

The Senate took into consideration the motion made on the 16th instant respecting Lieutenant Sterret, commander of the United States schooner Enterprize; which motion was amended and agreed to, and sundry resolutions adopted accordingly.

MONDAY, January 4, 1802.

Mr. BRECKENRIDGE notified the Senate that he should, on Wednesday next, move for the order of the day on that part of the Message of the President of the United States of the 8th of December last, which respects the judiciary system.

TUESDAY, January 5.

Mr. BROWN, from the State of Kentucky, attended.

REPORTING THE DEBATES.

The PRESIDENT laid before the Senate a letter signed Samuel H. Smith, stating that he was desirous of taking notes of the proceedings of the Senate, in such manner as to render them correct: Whereupon,

Resolved, That any stenographer desirous to take the debates of the Senate on Legislative business, may be admitted for that purpose, at such place within the area of the Senate Chamber as the President may allot:

And, on motion to reconsider the above resolution, it passed in the affirmative—yeas 17, nays 9.

YEAS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Ellery, Dwight Foster, Hillhouse, Howard, Logan, Jonathan Mason, Morris, Ogden, Olcott, Sumter, Tracy, White, and Wright.

NAYS—Messrs. Baldwin, Brown, Chipman, T. Foster, Franklin, Jackson, Nicholas, Sheafe, and Stone.

On motion, to amend the resolution, by adding, after the word stenographer, "He having given bond in the sum of —, with two sufficient sureties, in the sum of — each, for his good conduct," it passed in the negative—yeas 10, nays 18, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, Morris, Ogden, Olcott, Sheafe, and Tracy.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, J. Mason, Nicholas, Stone, Sumter, White, and Wright.

On motion, to agree to the original resolution, amended by adding the words "or note-taker," after the words stenographer, it passed in the affirmative—yeas 16, nays 12, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Sheafe, Tracy, and White.

So it was *Resolved*, That any stenographer, or note-taker, desirous to take the debates of the Senate on Legislative business, may be admitted for that purpose at such place, within the area of the Senate Chamber, as the President shall allot.*

[From the National Intelligencer of Jan. 8, 1802.]

* On Monday last the editor addressed a letter to the President of the Senate, requesting permission to occupy a position in the lower area of the Senate Chamber, for the purpose of taking with correctness the debates and proceedings of that body.

It may be necessary to remark that heretofore no stenographer has been admitted in this area; and the upper gallery, being open to the admission of every one, and very remote from the floor of the House, has prevented any attempt being made to take the debates, from the impossibility of hearing distinctly from it.

The contents of the letter were submitted by the President to the Senate; and a resolution agreed to, to the following effect: *Resolved*, That any stenographer, desirous to take the debates of the Senate on Legislative business, may be admitted for that purpose, at such

SENATE.

Judiciary System.

JANUARY, 1802.

The PRESIDENT laid before the Senate a letter signed William Doughty, clerk, with the general account of the late Treasurer of the United States, to the 30th of September, 1801; which was read, and ordered to lie on file.

WEDNESDAY, January 6.

Mr. BRECKENRIDGE moved that the Senate proceed to the consideration of the President's Message, delivered at the commencement of the session. Agreed to.

JUDICIARY SYSTEM.

Mr. MASON called for the reading of the Message, which was in part read; when the further reading of the whole document was suspended, and that part only read, which relates to the Judiciary System.

Upon which Mr. BRECKENRIDGE, from Kentucky, rose, and stated that two days ago he had given notice that on this day he would submit to the consideration of the Senate two resolutions respecting the Judiciary Establishment of the United States. As, however, those resolutions were not necessarily connected, and as they might be distinctly discussed, he would at present confine himself to moving the first resolution; without however foreclosing to himself the right of submitting the second after the disposition of the first. He, therefore, moved that the act passed last session *respecting the Judiciary Establishment* of the United States, be repealed.

[This is the act which created sixteen new circuit judges.]

The motion was seconded by Mr. MASON.

After the resolution was read by the PRESIDENT,

Mr. BRECKENRIDGE said he did not desire to

place, within the area of the Senate Chamber, as the President shall allot.

Whereupon, a motion was made to reconsider the above resolution, and agreed to. The yeas and nays being taken, which were—yeas 17, nays 9.

It was then moved to amend the resolution by adding after the word "stenographer," "he having given bond in the sum of —, with two sufficient sureties in the sum of — each, for his good conduct."

On which the yeas and nays were called, and stood—yeas 10, nays 18.

It was then moved to agree to the original resolution amended, by adding the words, "or note-taker" after the word "stenographer;" which passed in the affirmative. The yeas and nays being required were—yeas 16, nays 12.

On Wednesday the editor had, accordingly, assigned to him a convenient place in the lower area, from which he took notes of the proceedings of the Senate.

On the adoption of the above resolution, which opens a new door to public information, and which may be considered as the prelude to a more genuine sympathy between the Senate and the people of the United States, than may have heretofore subsisted, by rendering each better acquainted with the other, we congratulate, without qualification, every friend to the true principles of our republican institutions.

precipitate a vote on the question. But, having given notice two days since of his intention to move this resolution, he was himself prepared, if other gentlemen were prepared, to offer his sentiments on the subject. But if this were not the case; if gentlemen were not prepared to enter into a discussion of a point of such importance, he was not anxious for immediate consideration.

Mr. TRACY observed that the ordinary mode of procedure in Senate had been to refer, in the first instance, each substantive member of the President's Message to a select committee. But though this was the usual course, yet he felt in no way hostile to any mode of doing business, which should be most agreeable to the gentleman from Kentucky, or to the House. With an adherence to the ordinary course, he would have been better pleased, for the substantial reason, that by a reference of the subject to a select committee, on receiving a report, the minds of the House would be drawn more precisely to the points involved in it, than could be expected from a resolution so loose as the present, which could only give rise to verbal discussions.

Another course of procedure had not been unusual—that of obtaining leave to bring in a bill, in which event, the same result desired by Mr. TRACY would be insured, viz: the reference of the bill to a committee.

Mr. S. T. MASON differed from the gentleman from Connecticut. He believed the mode, now pursued, was perfectly correct, and conformable to a principle adopted this session, that the Senate was to be considered as in a committee of the whole on the President's Message, whenever taken up. Nor did he discern the necessity, in a body so select as this, of referring each subject to a select committee. But as the subject is extremely important, and some gentlemen seemed unprepared for the discussion, he moved its postponement till Friday.

Mr. BRECKENRIDGE said, that though he had given notice, in his opinion sufficient, of his purpose, yet, not wishing a precipitate discussion, he would agree to the desired delay.

The consideration of the resolution was then deferred to Friday next.

THURSDAY, January 7.

A message from the House of Representatives informed the Senate that the House have passed a bill for the apportionment of representatives among the several States, according to the second enumeration, in which they desire the concurrence of the Senate.

The bill was read the first time, and, by unanimous consent, a second time.

Ordered, That it be referred to Messrs. LOGAN, NICHOLAS, ELLERY, JACKSON, and STONE, to consider and report thereon.

Mr. TRACY, from the committee to whom was referred the bill concerning the library for the use of both Houses of Congress, reported amendments; which were read, and ordered to lie for consideration.

JANUARY, 1802.

Judiciary System.

SENATE.

FRIDAY, January 8.

The PRESIDENT read a letter addressed to him, and signed Thomas Tingey, and others, the vestry of Washington parish, in behalf of themselves and the other members of that church, soliciting the use of the room in the Capitol now occupied by the Court, as a place of worship on Sundays, during the inclemency of Winter.

Mr. LOGAN, from the committee, reported the bill for the apportionment of representatives among the several States, according to the second enumeration, without amendment; and it was agreed that the further consideration of this bill should be postponed to Monday next.

JUDICIARY SYSTEM.

Agreeably to the order of the day, the Senate proceeded to the consideration of the motion made on the 6th instant, to wit:

"That the act of Congress passed on the 13th day of February, 1801, entitled 'An act to provide for the more convenient organization of the Courts of the United States,' ought to be repealed."

Mr. BRECKENRIDGE then rose and addressed the President, as follows:

It will be expected of me, I presume, sir, as I introduced the resolution now under consideration, to assign my reasons for wishing a repeal of this law. This I shall do; and shall endeavor to show,

1. That the law is unnecessary and improper, and was so at its passage; and
2. That the courts and judges created by it, can and ought to be abolished.

1st. That the act under consideration was unnecessary and improper, is, to my mind, no difficult task to prove. No increase of courts or judges could be necessary or justifiable, unless the existing courts and judges were incompetent to the prompt and proper discharge of the duties consigned to them. To hold out a show of litigation, when in fact little exists, must be impolitic; and to multiply expensive systems, and create hosts of expensive officers, without having experienced an actual necessity for them, must be a wanton waste of the public treasure.

The document before us shows that, at the passage of this act, the existing courts, not only from their number, but from the suits depending before them, were fully competent to a speedy decision of those suits. It shows, that on the 15th day of June last, there were depending in all the circuit courts, (that of Maryland only excepted, whose docket we have not been furnished with,) one thousand five hundred and thirty-nine suits. It shows that eight thousand two hundred and seventy-six suits of every description have come before those courts, in ten years and upwards. From this it appears, that the annual average amount of suits has been about eight hundred.

But sundry contingent things have conspired to swell the circuit court dockets. In Maryland, Virginia, and in all the Southern and Southwestern States, a great number of suits have been

brought by British creditors; this species of controversy is nearly at an end.

In Pennsylvania, the docket has been swelled by prosecutions in consequence of the Western insurrection, by the disturbances in Bucks and Northampton counties; and by the sedition act. These I find amount in that State to two hundred and forty suits.

In Kentucky, non-resident land claimants have gone into the federal court from a temporary convenience: because, until within a year or two past, there existed no court of general jurisdiction co-extensive with the whole State. I find, too, that of the six hundred and odd suits which have been commenced there, one hundred and ninety-six of them have been prosecutions under the laws of the United States.

In most of the States there have been prosecutions under the sedition act. This source of litigation is, I trust, forever dried up. And, lastly, in all the States a number of suits have arisen under the excise law; which source of controversy will, I hope, before this session terminates, be also dried up.

But this same document discloses another important fact; which is, that notwithstanding all these untoward and temporary sources of federal adjudication, the suits in those courts are *decreasing*; for, from the dockets exhibited (except Kentucky and Tennessee, whose suits are summed up in the aggregate) it appears, that in 1799 there were one thousand two hundred and seventy-four, and in 1800 there were six hundred and eighty-seven suits commenced; showing a decrease of five hundred and eighty-seven suits.

Could it be necessary then to *increase* courts when suits were *decreasing*? Could it be necessary to multiply judges, when their duties were diminishing? And will I not be justified, therefore, in affirming, that the law was unnecessary, and that Congress acted under a mistaken impression, when they multiplied courts and judges at a time when litigation was actually decreasing?

But, sir, the decrease of business goes a small way in fixing my opinion on this subject. I am inclined to think, that so far from there having been a necessity at this time for an increase of courts and judges, that the time never will arrive when America will stand in need of thirty-eight federal judges. Look, sir, at your Constitution, and see the judicial power there consigned to federal courts, and seriously ask yourself, can there be fairly extracted from those powers subjects of litigation sufficient for six supreme and thirty-two inferior court judges? To me it appears impossible.

The judicial powers given to the federal courts were never intended by the Constitution to embrace, exclusively, subjects of litigation, which could, with propriety, be left with the State courts. Their jurisdiction was intended principally to extend to great national and foreign concerns. Except cases arising under the laws of the United States, I do not at present recollect but three or four kinds in which their power extends to subjects of litigation, in which private

persons only are concerned. And can it be possible, that with a jurisdiction embracing so small a portion of private litigation, in a great part of which the State courts might, and ought to participate, that we can stand in need of thirty-eight judges, and expend in judiciary regulations the annual sum of \$137,000?

No other country, whose regulations I have any knowledge of, furnishes an example of a system so prodigal and extensive. In England, whose courts are the boast, and said to be the security of the rights of the nation, every man knows there are but twelve judges and three principal courts. These courts embrace, in their original or appellate jurisdiction, almost the whole circle of human concerns.

The King's Bench and Common Pleas, which consist of four judges each, entertain all the common law suits of 40s. and upwards, originating among nine millions of the most commercial people in the world. They moreover revise the proceedings of not only all the petty courts of record in the Kingdom, even down to the courts of piepoudre, but also of the Court of King's Bench in Ireland; and these supreme courts, after centuries of experiment, are found to be fully competent to *all* the business of the Kingdom.

I will now inquire into the power of Congress to put down these additional courts and judges.

First, as to the courts, Congress are empowered by the Constitution "from time to time, to ordain and establish inferior courts." The act now under consideration, is a legislative construction of this clause in the Constitution, that Congress may abolish as well as create these judicial officers; because it does expressly, in the twenty-seventh section of the act, abolish the then existing inferior courts, for the purpose of making way for the present. This construction, I contend, is correct; but it is equally pertinent to my object, whether it be or be not. If it be correct, then the present inferior courts may be abolished as constitutionally as the last; if it be not, then the law for abolishing the former courts, and establishing the present, was unconstitutional, and consequently repealable.

But independent of this legislative construction, on which I do not found my opinion, nor mean to rely my argument, there is little doubt indeed, in my mind, as to the power of Congress on this law. The first section of the third article vests the judicial power of the United States in one Supreme Court and such inferior courts as Congress may, from time to time, ordain and establish. By this clause Congress *may*, from time to time, establish inferior courts; but it is clearly a discretionary power, and they *may* not establish them. The language of the Constitution is very different when regulations are not left discretionary. For example, "The trial," says the Constitution, "of all crimes (except in cases of impeachment) shall be by jury: representatives and direct taxes shall be apportioned according to numbers. All revenue bills shall originate in the House of Representatives," &c. It would, therefore, in my opinion, be a perversion, not only of language, but of intellect, to say, that although Congress may, from time to time,

establish inferior courts, yet, when established, that they shall not be abolished by a subsequent Congress possessing equal powers. It would be a paradox in legislation.

2d. As to the judges. The Judiciary department is so constructed as to be sufficiently secured against the improper influence of either the Executive or Legislative departments. The courts are organized and established by the Legislature, and the Executive creates the judges. Being thus organized, the Constitution affords the proper checks to secure their honesty and independence in office. It declares they shall not be removed from office during good behaviour; nor their salaries diminished during their continuance in office. From this it results, that a judge, after his appointment, is totally out of the power of the President, and his salary secured against legislative diminution, during his continuance in office. The first of these checks, which protects a judge in his office during good behaviour, applies to the President only, who would otherwise have possessed the power of removing him, like all other officers, at pleasure; and the other check, forbidding a diminution of their salaries, applies to the Legislature only. They are two separate and distinct checks, furnished by the Constitution against two distinct departments of the Government; and they are the only ones which are or ought to have been furnished on the subject.

But because the Constitution declares that a judge shall hold his office during good behaviour, can it be tortured to mean, that he shall hold his office after it is abolished? Can it mean, that his tenure should be limited by behaving well in an office which did not exist? Can it mean that an office may exist, although its duties are extinct? Can it mean, in short, that the shadow, to wit, the judge, can remain, when the substance, to wit, the office, is removed? It must have intended all these absurdities, or it must admit a construction which will avoid them.

The construction obviously is, that a judge should hold an existing office, so long as he did his duty in that office; and not that he should hold an office that did not exist, and perform duties not provided by law. Had the construction which I contend against been contemplated by those who framed the Constitution, it would have been necessary to have declared, explicitly, that the judges should hold their offices and their salaries during good behaviour.

Such a construction is not only irreconcilable with reason and propriety, but is repugnant to the principles of the Constitution. It is a principle of our Constitution, as well as of common honesty, that no man shall receive public money but in consideration of public services. *Sinecure* offices, therefore, are not permitted by our laws or Constitution. By this construction, complete *sinecure* offices will be created; hosts of Constitutional pensioners will be settled on us, and we cannot calculate how long. This is really creating a new species of public debt, not like any other of our debts; we cannot discharge the principal at any fixed time. It is worse than the deferred stock;

JANUARY, 1802.

Judiciary System.

SENATE.

for on that you pay an annual interest only, and the principal is redeemable at a given period. But here, you pay an annual principal, and that principal irredeemable except by the will of Providence. It may suit countries where public debts are considered as public blessings; for in this way a people might soon become superlatively blessed indeed.

Let me not be told, sir, that the salaries in the present case are inconsiderable, and ought not to be withheld; and that the doctrine is not a dangerous one. I answer, it is the principle I contend against; and if it is heterodox for one dollar, it is equally so for a million. But I contend the principle, if once admitted, may be extended to destructive lengths. Suppose it should hereafter happen, that those in power should combine to provide handsomely for their friends, could any way so plain, easy, and effectual, present itself, as by creating courts, and filling them with those friends? Might not sixty as well as sixteen, with salaries of twenty thousand, instead of two thousand dollars, be provided for in this way?

The thing, I trust, will not happen. It is presuming a high degree of corruption; but it might happen under the construction contended for; as the Constitution presumes corruption may happen in any department of the Government, by the checks it has furnished against it; and as this construction does open a wide door for corruption, it is but fair reasoning to show the dangers which may grow out of it; for, in the construction of all instruments, that which will lead to inconvenience, mischief, or absurdity, ought to be avoided. This doctrine has another difficulty to reconcile: After the law is repealed, they are either judges or they are not. If they are judges they can be impeached; but for what? For *malfeasance in office* only. How, I would ask, can they be impeached for malfeasances *in office*, when their offices are abolished? They are not officers, but still they are entitled to the emoluments annexed to an office. Although they are judges, they cannot be guilty of malfeasances, because they have no office. They are only *quasi* judges so far as regards the *duties*, but *real* judges so far as regards the *salary*. It must be the *salary*, then, and not the *duties* which constitute a judge. For my part, I do not know under what class of things to range them, or what name to give them. They are unacknowledged by the letter, spirit, or genius, of our Constitution, and are to me non-descripts.

There is another difficulty under this construction still to encounter, and which also grows out of the Constitution: By the Constitution, a new State may be formed by the junction of two or more States, with their assent and that of Congress. If this doctrine, once a judge and always a judge, be correct, what would you do in such an event, with the district judges of the States who formed that junction? Both would be unnecessary, and you would have, in a single State, two judges of equal and concurrent jurisdiction; or one a real judge, with an office, and another a quasi judge, without an office. The States also forming such junction, would be equally embar-

rassed with their State judges; for the same construction would be equally applicable to them.

Upon this construction, also, an infallibility is predicated, which it would be arrogance in any human institution to assume, and which goes to cut up legislation by the roots. We would be debarred from that which is indulged to us from a higher source, and on subjects of higher concern than legislation; I mean a retraction from and correction of our errors. On all other subjects of legislation we are allowed, it seems, to change our minds, except on judiciary subjects, which, of all others, is the most complex and difficult. I appeal to our own statute book to prove this difficulty; for in ten years Congress have passed no less than twenty-six laws on this subject.

I conceive, sir, that the tenure by which a judge holds his office, is evidently bottomed on the idea of securing his honesty and independence, whilst exercising his office. The idea was introduced in England, to counteract the influence of the Crown over the judges; but if the construction now contended for shall prevail, we shall, in our mistaken imitation of this our favorite prototype, outstrip them, by establishing what they have not, a judicial oligarchy; for there their judges are removable by a joint vote of Lords and Commons. Here ours are not removable, except for malfeasance in office; which malfeasance could not be committed, as they would have no office.

Upon the whole, sir, as all courts under any free Government must be created with an eye to the administration of justice only; and not with any regard to the advancement or emolument of individual men; as we have undeniable evidence before us that the creation of the courts now under consideration was totally unnecessary; and as no Government can, I apprehend, seriously deny that this Legislature has a right to repeal a law enacted by a preceding one, we will, in any event, discharge our duty by repealing this law; and thereby doing all in our power to correct the evil. If the judges are entitled to their salaries under the Constitution, our repeal will not affect them; and they will, no doubt, resort to their proper remedy. For where there is a Constitutional right, there must be a Constitutional remedy.

Mr. OLCOTT, of New Hampshire, thought the subject was of so much importance as to merit further consideration. The arguments of the gentleman from Kentucky, however ingenious, had not convinced him that the law ought to be repealed. It had not risen like a mushroom in the night, but the principles on which it rested had been settled after mature reflection. He thought it would be extraordinary, before any inconvenience had been discovered, to set such a law aside. For these reasons, Mr. O. moved the postponement of the consideration of the question.

Mr. COCKE, of Tennessee.—This act is said to be entirely experimental, and it is further said, that no inconveniences had arisen under it. He thought serious inconveniences had arisen. The inconvenience of paying \$137,000 a year was truly serious; and it was an inconvenience which ought to be got rid of as soon as possible. It was

expected that gentlemen opposed to the resolution would come forward with their arguments against it. If, however, they had no arguments to use, he thought his friend from Kentucky had brought forward reasons so cogent and experimental that the House must be convinced of the propriety of the repeal.

Mr. DAYTON, of New Jersey, trusted it was not the disposition of the mover to press a decision to-day. He thought it would be improper to postpone the discussion, as gentlemen would thereby be precluded from offering their opinions on the subject. He hoped the motion for postponement would be withdrawn, that other gentlemen might have an opportunity to speak.

The motion was withdrawn.

Mr. J. MASON, of Massachusetts, said, it would be agreed on all hands that this was one of the most important questions that ever came before a Legislature. Were he not of this opinion he would not have risen to offer his sentiments. But he felt so deep an interest in the question, and from the respect which he entertained for the district of country he represented, he deemed it his duty to meet the subject, and not be satisfied with giving to it his silent negative.

It was well known, and he presumed it would be readily agreed to, that no people on earth, for the last twenty-four years, had been so much in the habit of forming systems of government as the people of the United States. Nor had any people been so fortunately situated for cool and correct deliberation. In the Constitutions they had formed, it would appear that there had been an uniform concurrence in the establishment of one great prominent feature, and also in the application of one uniform principle to that feature: that the Legislative, the Executive, and the Judicial, should form the three great departments of Government, and that they should be distinct from and independent of each other; and the more the proceedings and sentiments of the people were examined, the more clearly would it appear that all the new and additional checks created, had been applied to adjust the relative weakness or strength of the several departments of Government. The same principle had been observed in the old world, whenever an opportunity presented for forming a constitution, having for its object, the protection of individual rights. It accorded, too, with the uniform opinions of the most celebrated historians and politicians, both of Europe and America; with the opinions and practices of all our Legislatures. Nor had Mr. MASON ever heard any one hardy enough to deny the propriety of its observance.

He well recollected, that among the great grievances, which had roused us into an assertion of our independence of England, it was declared in the instrument asserting that independence, "that the Crown had the appointment of judges dependent on its will and favor."

From all these circumstances he concluded that the people of America, when they formed a system for their Federal Government, intended to establish this great principle; and the conclusion

would be confirmed by an examination of the Constitution, which in every section recognised or referred to it.

The Constitution, in the construction of the Executive, Legislative, and Judiciary departments, had assigned to each a different tenure. The President was chosen for four years; the Senate for six years, subject to a prescribed rotation biennially; the House of Representatives for two years; and the Judiciary during good behaviour. It says to the President, at the expiration of every four years, you shall revert to the character of a private citizen, however splendid your talents or conspicuous your virtue. Why? Because you have assigned to you powers which it is dangerous to exercise. You have the power of creating offices and officers. You have prerogatives. The temptation to an abuse of your power is great. Such has been the uniform experience of ages. The Constitution holds the same language to the Senate and House of Representatives: It says, it is necessary for the good of society that you also should revert at short periods to the mass of the people, because to you are consigned the most important duties of Government, and because you hold the purse-strings of the nation.

To the Judiciary: What is the language applied to them? The judges are not appointed for two, four, or any given number of years; but they hold their appointments for life, unless they misbehave themselves. Why? For this reason: They are not the depositaries of the high prerogatives of Government. They neither appoint to office, or hold the purse-strings of the country, or legislate for it. They depend entirely upon their talents, which is all they have to recommend them. They cannot, therefore, be disposed to pervert their power to improper purposes. What are their duties? To expound and apply the laws. To do this, with fidelity and skill, requires a length of time. The requisite knowledge is not to be procured in a day. These are the plain and strong reasons which must strike every mind, for the different tenure by which the judges hold their offices, and they are such as will eternally endure wherever liberty exists.

On examination, it will be found that the people, in forming their Constitution, meant to make the judges as independent of the Legislature as of the Executive. Because the duties which they have to perform, call upon them to expound not only the laws, but the Constitution also; in which is involved the power of checking the Legislature in case it should pass any laws in violation of the Constitution. For this reason it was more important that the judges in this country should be placed beyond the control of the Legislature, than in other countries where no such power attaches to them.

Mr. MASON challenged gentlemen to exhibit a single instance, besides that lately furnished by Maryland, of a Legislative act, repealing a law passed in execution of a Constitution, under which the judges held their offices during good behaviour. In truth, no such power existed, nor was it in the power of any Legislature, so circum-

JANUARY, 1802.

Judiciary System.

SENATE.

stanced, by a single law to dash them out of existence.

The opinion of Mr. MASON, therefore, was, that this Legislature have no right to repeal the judiciary law; for such an act would be in direct violation of the Constitution.

The Constitution says: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

Thus it says, "the judges *shall hold* their offices during good behaviour." How can this direction of the Constitution be complied with, if the Legislature shall, from session to session, repeal the law under which the office is held, and *remove the office*? He did not conceive that any words, which human ingenuity could devise, could more completely get over the remarks that had been made by the gentleman from Kentucky. But that gentleman says, that this provision of the Constitution applies exclusively to the President. He considers it as made to supersede the powers of the President to remove the judges. But could this have been the contemplation of the framers of the Constitution, when even the right of the President to remove officers at pleasure, was a matter of great doubt, and had divided in opinion our most enlightened citizens. Not that he stated this circumstance because he had doubts. He thought the President ought to have the right; but it did not emanate from the Constitution; was not expressly found in the Constitution, but sprang from Legislative construction.

Besides, if Congress have the right to repeal the whole of the law, they must possess the right to repeal a section of it. If so, they may repeal the law so far as it applies to a particular district, and thus get rid of an obnoxious judge. They may remove his office from him. Would it not be absurd still to say, that the removed judge held his office during good behaviour?

The Constitution says: "The judges shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." Why this provision? Why guard against the power to deprive the judges of their pay in a diminution of it; and not provide against what was more important, their existence?

Mr. MASON knew that a Legislative body was occasionally subject to the dominance of violent passions; he knew that they might pass unconstitutional laws; and that the judges, sworn to support the Constitution, would refuse to carry them into effect; and he knew that the Legislature might contend for the execution of their statutes: Hence the necessity of placing the judges above the influence of these passions; and for these reasons the Constitution had put them out of the power of the Legislature.

7th Cox — 2

Still, if the gentlemen would not agree with him as to the unconstitutionality of the measure proposed, he would ask, was it expedient? Were there not great doubts existing throughout the United States? Ought not each gentleman to say, though I may have no doubts or hesitancy, are not a large portion of our citizens of opinion that it would violate the Constitution? If this diversity of sentiment exists, ought not the evils under the judiciary law to be very great before we touch it? Ought we not to aim at harmonizing, instead of dividing our citizens? Was not the Constitution a sacred instrument; an instrument ever to be approached with reverence; an instrument which ought not lightly to be drawn from its hallowed retreat, and subjected to the flux and reflux of passion? But where is the evil complained of? This system was established only last session; scarcely had it been yet organized; scarcely had we tried it on its very threshold; where then the necessity of being so pointed, as to destroy a system scarcely formed three days ago? Does not this manifest precipitation? Will it not manifest more magnanimity, more rationality, to abide by it until we try it; instead of taking up a pen and dashing it out of existence?

The reason that the suits depending were not so numerous, arose from the nature of the old establishment. That establishment had no parallel. It carried with it the seeds of its own dissolution. No set of judges could be found physically hardy enough to execute it. Such was the labor of their duties, that they were denied time for study or improvement. Besides, a case was heard at one term by one judge, and postponed for consideration to the next term. At that term another judge appeared, and all the arguments were to be gone over anew, and the same thing might happen again and again. Was this the way to extend justice to our citizens? Was not the delay equivalent to a denial of justice? It was a fact that three-fourths of the time of the judges had been taken up in travelling.

It may be true, that the number of suits in the federal courts is lessened; and if the internal taxes are to be swept away, it may be still more lessened as far as depends upon that source. But is it possible, that suits will go on diminishing as the gentleman seems to think? Is reason so predominant? Is the millenium so near at hand? On the contrary, is not our commerce increasing with great rapidity? Is not our wealth increasing? And will not controversies arise in proportion to the growth of our numbers and property? controversies, which will go to the federal tribunals, as soon as the judiciary system is fully established?

By the documents quoted by the gentleman from Kentucky, it appears that more business has been lately done in the federal courts than in any other antecedent time, except in one or two counties in Pennsylvania.

Besides, said Mr. M. even if there be not a great pressure of business, had we not better pay the paltry sum of thirty or forty thousand dollars for a system too broad, than have one that is too narrow?

Is it not a melancholy consideration, that in many of the European States, the costs are equal to the principle contended for? It would be honorable to the United States to exhibit a different example. It would be honorable to them to hold out an example, even if confined to foreigners, of prompt and efficacious justice, though at the expense of \$100,000. Such an example would be a cause for national triumph, and our people would exult in it.

Inasmuch, therefore, as to render the judges respectable, it was necessary to make their appointments permanent; as time, labor, experience, and long study, were required to perfect any man in a knowledge of the laws of his country; inasmuch as it has been thought good policy, that the judges should be well paid, and that they should be so placed as to be divested of all fear, and neither to look to the right nor left; inasmuch as they should be so placed as to render them independent of Legislative as well as of Executive power; he hoped this law would not be repealed.

These were the reasons which Mr. M. assigned as those which would influence his decision. He acknowledged, that he had not entered the House prepared to offer his sentiments; but, as the question was about to be put, he had thought it best to offer them, such as they were, rather than to give a silent vote on a subject of such great importance.

Mr. WRIGHT, of Maryland, said it must be agreed that the subject was one of great importance, from its effect upon our revenues. If the repeal of the act of last session was Constitutional, he presumed there could be little doubt of its expediency, from the documents on our table. Has the Constitution vested the Legislature with a power over the subject of the resolution? If so, then should a law, which had been the effect of a flux of passion, be repealed by a reflux of reason. He believed that it had been introduced at the period of an expiring administration. It had been resisted by the republican side of the Senate, and he trusted that now, on the return of reason, it would be repealed.

An allusion has been made to the State of Maryland, which had repealed a law respecting the judiciary. Mr. W. here quoted the constitution of that State, whose provisions, he observed, so far as respected the tenure of the office of a judge, corresponded with those of the Constitution of the United States. The Legislature of that State had been of opinion, and correctly too, that they did possess the power of repealing a law formed by their predecessors. And the Legislature of the United States possessed the same power. This they had already determined by the very act of the last session, which, while it created a number of new judges, abolished the offices of several district judges.

It was clear that the Constitution meant to guard the officer and not the office. Will it be said that what the Legislature makes to-day, cannot be annihilated to-morrow? Even as to the judges of the Supreme Court, had not the law first constituted six, and was it not now by law reduced to five? And if Congress has power to reduce

the number of the superior, have they not the same power to reduce the number of the inferior judges? Are we to be eternally bound by the follies of a law which ought never to have been passed?

Why the expression in the Constitution, "The judicial power shall be vested in such inferior courts as Congress may, *from time to time*, ordain and establish," if it had been intended, as is now contended, that the office being once bestowed, no change can be made?

If the case of those who have accepted those offices, be considered as a hard one, may it not be said that they knew the Constitution, and the tenure by which their offices were to be held? In our regard for individual interest, we ought not to sacrifice the great interests of our country; and was it not demonstrable that, if twenty-one judges were sufficient when twelve hundred suits existed, they were equally so when there were no more than seven hundred?

The gentleman from Massachusetts was wrong in stating that Maryland was the only State that had repealed a law creating judiciary offices. Virginia, if he was not misinformed, had done the same thing. But he wanted not these precedents. Our own archives furnished us with abundant precedents. We had reduced the judges of the Supreme Court from six to five; we had annihilated two districts. The very gentlemen opposed now to the repeal of this law, had voted for these measures. Thus it appeared, that, though the Constitution justified the measure *then*, it prohibited it *now*!

Believing the Judiciary law of the last session had arisen from a disposition to provide for the warm friends of the existing Administration; believing that great inconveniences had arisen under it; believing its expense to be oppressive; and believing that if one Legislature had a right to pass it, another Legislature had the same right to repeal it; he trusted that, however a preceding Legislature might have been governed by passion, the present Legislature would, by repealing it, show that they were governed by reason.

Mr. MORRIS, of New York.—Mr. President, I am so very unfortunate, that the arguments in favor of the motion have confirmed my opinion that the law to which it refers ought not to be repealed. The honorable mover has rested his proposition on two grounds:

1st. That the Judiciary law passed last session is unnecessary; and,

2dly. That we have a right to repeal it, and ought to exercise that right.

The numerical mode of argument made use of to establish his first point is perfectly novel, and commands my tribute of admiration. This is the first time I ever heard the utility of the courts of justice estimated by the number of suits carried before them. I have read that a celebrated monarch of England, the great Alfred, had enacted such laws, established such tribunals, and organized such a system of police, that a purse of gold might be hung up on the highway without any danger of being taken. Had the honorable gentleman from Kentucky existed in those days, he

JANUARY, 1802.

Judiciary System.

SENATE.

would, perhaps, have attempted to convince old Alfred that what he considered as the glory of his reign was its greatest evil. For, by taking the unfrequency of crimes as a proof that tribunals were unnecessary, and thus boldly substituting effect for cause, the gentleman might demonstrate the inutility of any institution by a system of reasoning the most fallacious.

But, sir, if, with that poor measure of ability which it has pleased God to give me, I march on that ground which I have been accustomed to deem solid, I should say that, in so far as the terror of our Judicial institutions prevented the perpetration of crimes, in that same degree are those institutions useful. This would be my mode of reasoning, but for the wonderful discovery made by the honorable mover of the resolution.

We have been told of the great expense of the Judiciary—that it amounted to \$137,000. And thus attributing the whole expense of the establishment to this particular law, it has been assumed in argument that to repeal the law would save \$137,000. If the other arithmetical arguments of the gentleman were equally incorrect, his inferences will be entitled to but little attention.

Of this sum, it appears, from a report of the Secretary of the Treasury, that \$45,000 are for the contingent expenses of jurors, witnesses, &c., which serves in some measure to show that it is expected much business will be actually done.

The expense arising under this law, that it is proposed to repeal, amounts to thirty thousand dollars, exclusive of fifteen thousand dollars estimated for contingent expenses, making, together, forty-five thousand dollars. But let us not stint the allowance; throw in a few thousand more, and let the whole be stated at fifty-one thousand; apportion this sum among the people of the United States, according to the census lately taken, and you will find that each individual will pay just one cent. And for this insignificant saving of a cent a man, we are called upon to give up all that is valuable to a nation.

One of the great purposes of a Government is to secure the people from foreign invasion. To be ready to repel such invasion requires a great revenue, and many officers become necessary to collect it. Such an invasion, however, may or may not take place. If I judge from certain documents laid before us, those who administer our affairs have but little apprehension of that event. If, then, there be little or no such danger, or if the people be sufficiently secured against it, what else have they a right to ask for in return for their money expended in the support of Government? They have a right to ask for the protection of the law in proper courts of justice, to secure the weak against the strong, the poor against the rich, the oppressed against the oppressor. And is this little which they ask to be denied? Are the means by which the injured can obtain redress to be curtailed and diminished? Much may be feared from armies. They may turn their swords against our bosoms; they may elevate a Chief to despotic power. But what danger is to be apprehended from an army of judges?

Gentlemen say, recur to the ancient system. What is the ancient system? Six judges of the Supreme Court to ride the circuit of America twice a year, and sit twice a year at the seat of Government. Without inquiring into the accuracy of a statement made by the gentleman respecting the courts of England, in which, I apprehend, he will find himself deceived, let me ask what would be the effects of the old system here? Cast an eye over the extent of our country, and a moment's consideration will show that the First Magistrate, in selecting a character for the bench, must seek less the learning of a judge than the agility of a post-boy. Can it be possible that men advanced in years, (for such alone can have the maturity of judgment fitting for the office;) that men educated in the closet—men who, from their habits of life, must have more strength of mind than of body; is it, I say, possible that such men can be running from one end of the continent to the other? Or, if they could, can they find time to hear and decide causes? I have been told by men of eminence on the bench, that they could not hold their offices under the old arrangement.

What is the present system? You have added to the old judges seven district and sixteen circuit judges. What will be the effect of the desired repeal? Will it not be a declaration to the remaining judges that they hold their offices subject to your will and pleasure? And what will be the result of this? It will be, that the check established by the Constitution, wished for by the people, and necessary in every contemplation of common sense, is destroyed. It had been said, and truly, too, that Governments are made to provide against the follies and vices of men. For to suppose that Governments rest upon reason is a pitiful solecism. If mankind were reasonable, they would want no Government. Hence, checks are required in the distribution of power among those who are to exercise it for the benefit of the people. Did the people of America vest all powers in the Legislature? No; they had vested in the judges a check intended to be efficient—a check of the first necessity, to prevent an invasion of the Constitution by unconstitutional laws—a check which might prevent any faction from intimidating or annihilating the tribunals themselves.

On this ground, said Mr. MORRIS, I stand to arrest the victory meditated over the Constitution of my country; a victory meditated by those who wish to prostrate that Constitution for the furtherance of their own ambitious views. Not of him who had recommended this measure, nor of those who now urge it; for, on his uprightness and their uprightness, I have the fullest reliance; but of those in the back-ground who have further and higher objects. These troops that protect the out-works are to be first dismissed. Those posts which present the strongest barriers are first to be taken, and then the Constitution becomes an easy prey.

Let us then, secondly, consider whether we have constitutionally a power to repeal this law. [Here Mr. MORRIS quoted the third article and first section of the Constitution.] I have heard a

verbal criticism about the words *shall* and *may*, which appeared the more unnecessary to me, as the same word, *shall*, is applied to both members of the section. For it says "the judicial power, &c. *shall* be vested in one Supreme Court and such inferior courts as the Congress *may*, from time to time, ordain and establish." The Legislature, therefore, had, without doubt, the right of determining, in the first instance, what inferior courts should be established; but when established, the words are imperative, a part of the judicial power shall vest in them. And "the judges shall hold their offices during good behaviour." They shall receive a compensation which shall not be diminished during their continuance in office. Therefore, whether the remarks be applied to the tenure of office, or the quantum of compensation, the Constitution is equally imperative. After this exposition, gentlemen are welcome to any advantage to be derived from the criticism on *shall* and *may*.

But another criticism, which, but for its serious effects, I would call pleasant, has been made: the amount of which is, you shall not take the man from the office, but you may take the office from the man; you shall not drown him, but you may sink his boat under him; you shall not put him to death, but you may take away his life. The Constitution secures to a judge his office, says he shall hold it, that is, it shall not be taken from him during good behaviour; the Legislature shall not diminish, though their bounty may increase, his salary; the Constitution provides perfectly for the inviolability of his tenure; but yet we may destroy the office which we cannot take away, as if the destruction of the office would not as effectually deprive him of it as the grant to another person. It is admitted that no power derived from the Constitution can deprive him of the office, and yet it is contended that by repeal of the law that office may be destroyed. Is not this absurd? It had been said, that whatever one Legislature can do another can undo; because no Legislature can bind its successor, and therefore that whatever we make we can destroy. This I deny, on the ground of reason, and on that of the Constitution. What! can a man destroy his own children? Can you annul your own compacts? Can you annihilate the national debt? When you have by law created a political existence, can you, by repealing the law, dissolve the corporation you had made? When, by your laws, you give to an individual any right whatever, can you, by a subsequent law, rightfully take it away? No. When you make a compact you are bound by it. When you make a promise you must perform it. Establish the contrary doctrine, and what follows? The whim of the moment becomes the law of the land; your country will be looked upon as a den of robbers; every honest man will fly your shores. Who will trust you, when you are the first to violate your own contracts? The position, therefore, that the Legislature may rightfully repeal every law made by a preceding Legislature, when tested by reason, is untrue; and it is equally untrue when compared with the precepts of the Constitution; for, what does the Constitution say?

"You shall make no *ex post facto* law." Is not this an *ex post facto* law?

Gentlemen say the system of the last session is mere theory. For argument sake, it shall be granted; and what then is the language of reason? Try it; put it to the test of experience. What respect can the people have for a Legislature that, without reflection, meets but to undo the acts of its predecessors? Is it prudent, is it decent, even if the law were unwise, thus to commit our reputation and theirs? Is it not highly dangerous to call upon the people to decide which of us are fools, for one of us must be?

And what would be the effect on the injured man who seeks redress in a court of justice, and whom, by this repeal, you shall have deprived of his right? You have saved him a miserable cent, and you have perhaps utterly ruined him.

But the honorable mover of the resolution has told us not only what is, but what is to be. He has told us not only that suits have decreased, but that they will decrease, and, relying on this preconception, informs us that the internal taxes will be repealed; and grounds the expediency of repealing the judiciary law, on the annihilation of these taxes. Thus, taking for granted the non-existence of a law that yet exists, he infers from its destruction, and the consequent cessation of suits under it, the inutility of the judicial establishment. And when he has carried his present point, and broken down the judiciary system, he will tell us, perhaps, that we may as well repeal the internal taxes, because we have no judges to enforce the collection of them.

But what will be the effect of these repeals, and of all these dismissions from office? I impeach not the motives of gentlemen who advocate this measure. In my heart I believe them to be upright. But they see not the consequences. We are told the States want, and ought to have, more power. We are told that they are the legitimate sources from which the citizen is to derive protection. Their judges are, I suppose, to enforce our laws. Judges appointed by State authority, supported by State salary, and looking for promotion to State influence, or dependent upon State party. There are some honorable gentlemen now present, who sat in the Convention which formed this Constitution. I appeal to their recollection, if they have not seen the time when the fate of America was suspended by a hair? my life for it, if another convention be assembled, they will part without doing anything. Never, in the flow of time, was there a moment so propitious, as that in which the Convention assembled. The States had been convinced, by melancholy experience, how inadequate they were to the management of our national concerns. The passions of the people were lulled to sleep; State pride slumbered; the Constitution was promulgated; and then it awoke, and opposition was formed; but it was in vain. The people of America bound the States down by this compact.

One great provision of the Constitution—a provision that exhibited the sublime spectacle of a great State bowing before the tribunal of justice

JANUARY, 1802.

Apportionment Bill.

SENATE.

is gone! Another great bulwark is now to be removed. You are told you must look to the States for protection; your internal revenues are to be swept away; your sole reliance must rest upon commercial duties. In this reliance you will be deceived. But what is to be the effect of all these changes? I am afraid to say; I will leave it to the feelings and consciences of gentlemen. But remember, the moment this Union is dissolved, we shall no longer be governed by votes.

Examine the annals of history. Look into the records of time, see what has been the ruin of every Republic. The vile love of popularity. Why are we here? To save the people from their most dangerous enemy; to save them from themselves. What caused the ruin of the Republics of Greece and Rome? Demagogues, who, by flattery, gained the aid of the populace to establish despotism. But if you will shut your eyes to the light of history, and your ears to the voice of experience, see at least what has happened in your own times. In 1789, it was no longer a doubt with enlightened statesmen, what would be the event of the French Revolution; before the first of January, 1790, the only question was, who would become the despot. The word liberty, indeed, from that day to this, had been sounded in our ears, but never had any real existence; there is nothing left but the word.

We are now about to violate the Constitution. Once touch it with unhallowed hands; sacrifice but one of its provisions, and we are gone. We commit the fate of America to the mercy of time and chance.

I hope the honorable gentleman from Maryland will pardon me, if, from the section of the law which he has cited, I deduce an inference diametrically opposite to that for which he has contended. He has told us that "the last Congress, in reducing the judges of the Supreme Court from six to five, have exercised the right which is now to be used, and made a legislative construction of this clause in the Constitution." But look at the law; it declares that this reduction shall not be made until, by death or resignation, only five judges shall remain. Thus, in the very moment when they express the opinion, that five judges are sufficient, they acknowledge their incompetency to remove the sixth judge, and thereby make the Legislative declaration, that they had not the right now contended for.

Mr. M. here noticed some other remarks which had fallen from the gentleman from Maryland, (Mr. WRIGHT,) on the construction of the Constitution; and concluded by recapitulating his arguments. A contract, said he, is made between the Government and the Judiciary; the President appoints; the Legislature fixes his salary; he accepts the office; the contract is complete. He is then under the protection of the Constitution, which neither the President nor Congress can infringe. The contract is a solemn one. Can you violate it? If you can you may throw the Constitution into the flames—it is gone—it is dead.

When Mr. MORRIS had concluded his remarks, the Senate adjourned.

MONDAY, January 11.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

I now communicate to you a memorial of the Commissioners of the City of Washington, together with a letter of later date, which, with the memorial of January 28, 1801, will possess the Legislature fully of the state of the public interests and of those of the City of Washington confided to them. The moneys now due, and soon to become due, to the State of Maryland, on the loan guarantied by the United States, call for an early attention. The lots in the city which are chargeable with the payment of these moneys are deemed not only equal to the indemnification of the public, but to insure a considerable surplus to the city, to be employed for its improvement; provided they are offered for sale only in sufficient numbers to meet the existing demand. But the act of 1796 requires that they shall be positively sold in such numbers as shall be necessary for the punctual payment of the loans. Nine thousand dollars of interest are lately become due; three thousand dollars quarter-yearly will continue to become due; and fifty thousand dollars, an additional loan, are reimbursable on the first day of November next. These sums would require sales so far beyond the actual demand of the market, that it is apprehended that the whole property may be thereby sacrificed, the public security destroyed, and the residuary interest of the city entirely lost. Under these circumstances I have thought it my duty, before I proceed to direct a rigorous execution of the law, to submit the subject to the consideration of the Legislature. Whether the public interest will be better secured in the end, and that of the city saved, by offering sales commensurate only to the demand at market, and advancing from the Treasury, in the first instance, what these may prove deficient, to be replaced by subsequent sales, rests for the determination of the Legislature. If indulgence for the funds can be admitted, they will probably form a resource of great and permanent value; and their embarrassments have been produced only by overstrained exertions to provide accommodations for the Government of the Union.

TH: JEFFERSON.

JANUARY 11, 1802.

The Message and papers therein referred to were read, and referred to Messrs. TRACY, WRIGHT, and HOWARD, to consider and report thereon.

The Senate proceeded to consider the amendments reported by the committee to whom was referred the bill, entitled "An act concerning the library for the use of both Houses of Congress," and the amendments, with further amendments, were adopted.

The bill was then read the third time and passed, as amended.

APPORTIONMENT BILL.

The Apportionment bill, as received from the House of Representatives, was taken up. This bill fixes the ratio of representation at one member for every 33,000 persons in each State.

Mr. WELLS moved to strike out 33,000, his object being to introduce 30,000, for which he assigned his reasons at some length.

On this motion a debate of some length ensued, in which the provisions of the bill as they stood were supported by Messrs. JACKSON, MASON, WRIGHT, and COCKE; and opposed by Messrs. WELLS and HILLHOUSE.

Mr. WHITE, of Delaware.—Believing as I do, sir, that the minds of gentlemen on this floor are thoroughly made up as to the present subject, and that any observations now to be offered will not influence a single vote, but merely occupy the time of the Senate to no useful purpose, I shall ask your indulgence but a few moments. I cannot, sir, sit quietly and see this bill reported by your committee, meditating as it certainly does a manifest injury to the State I have the honor in part to represent, pass into a law, without doing more than oppose to it a silent negative; without holding up my voice and protesting most solemnly against the extreme injustice of the measure. If, sir, this bill passes in its present shape, there will be left in the State of Delaware twenty-eight thousand eight hundred and eleven people unrepresented in the popular branch of their Legislature. Gentlemen may say, that this is only a fraction, and that in a general apportionment of representation, fractional numbers are unavoidable. Sir, I acknowledge it is only a fraction, but it is a fraction that includes one-half the population of that State, and amounts, even upon the present contemplated plan, to within four thousand of the number sufficient to gain another Representative. Sir, twenty-eight or thirty thousand would, to one of the large States, be an inconsiderable fraction. Apportion that number, for instance, among the twenty-one Representatives from Virginia, and you give to each member but a fraction of about thirteen hundred; whereas from Delaware, there will be but one representative, and over and above his legal number a fraction of near twenty-nine thousand people unrepresented. Is this fair, sir? Is this equitable? I ask, gentlemen, is it not unfriendly and wrongful? And can it be possible, sir, that the transcendent omnipotence of a majority have fated, if I may use the expression, this injustice upon a sister State? Suppose, sir, Delaware to have but one Representative and Virginia twenty, a fraction of five thousand to the former is equal to a redundant number of one hundred thousand to the latter; or take, sir, the present case, and you will find that the fraction of twenty-nine thousand in the State of Delaware, apportioned upon the representation, is at least equal to a redundant number in the State of Virginia of three hundred thousand. If, sir, the divisor is fixed at thirty thousand, Delaware will have two Representatives; her weight, then, in the other House, will, in relation to Virginia, be as one to twelve, but if she is compelled to submit to the divisor of thirty-three thousand, you allow her but one Representative; you deny her nearly one-half her rightful influence, and place her on the floor of the House of Representatives in a relative situation toward Virginia, as one to twenty-one. Sir, an additional Representative to any of the larger States is not of the same consequence as another would be to Delaware. To Virginia,

for instance, one is but the twentieth part of her force, to Delaware it would be one-half her force. Gentlemen may say that Delaware is the smallest State; but let it be remembered, sir, that her rights are equally sacred with those of the largest States; and although her citizens are not so numerous, yet, sir, their State sovereignty and other Constitutional rights are quite as dear and valuable to them, as the blessing can be to any other people; and, let me add, sir, she is among the oldest States; her history travels back through the bloody scenes of your Revolution; she dates her era at your Declaration of Independence, and I am proud to say, and can do so without detracting from her neighbors, in proportion to her population, her resources, and extent, during the severe contest for American liberty, she contributed, in blood and treasure, as freely to its support and permanent establishment, as any State in the Union.

But, Mr. President, there is another point of light in which I must be permitted to present the glaring injustice of this measure. By the Constitution of the United States, taxation is not apportioned among the respective States according to representation, but according to population. Delaware, then, although in the House of Representatives, where the money affairs of our country are principally managed, she has but one member, and Virginia twenty-one, is not taxed to the amount only of the twentieth part of the taxes of Virginia, according to representation, but to the amount of the twelfth part of the taxes of that State, according to population. Thus, sir, nearly one-half the citizens of Delaware are obliged to pay their proportion of taxes to the support of your Government, when you allow them no voice in either laying and disposing of those taxes, or, what is perhaps even more material, in pointing out the objects of taxation. Their situation may, in some respects, be likened to a very memorable grievance once heavily complained of in this country, when the Parliament of Great Britain arrogated to themselves the right of taxing our fathers without their consent.

Sir, the doctrine urged by some gentlemen that the divisor of thirty thousand will increase the House of Representatives to a body too large and unwieldy for the convenient and ordinary purposes of business, seems to me totally without foundation. The observation and experience of every man must be sufficient at once to satisfy him that this cannot be the consequence; we have before our eyes, sir, examples that prove directly the reverse. This divisor will give to your House of Representatives but one hundred and fifty-seven members; the State of Virginia has in the popular branch of her Legislature one hundred and eighty members, and we have not been told that it is too numerous. The British House of Commons, before the union with Ireland, consisted of about five hundred and fifty members, and we heard no complaint of the numbers; on the contrary, sir, the nation wished a fuller representation; and it is from that House, too, sir, that, according to this logic, must be so extremely riot-

JANUARY, 1802.

Judiciary System.

SENATE.

ous and disorderly, we have drawn most of the rules that govern the proceedings of this honorable body.

Again, sir, the nature and spirit of your Government requires a full representation in the Legislature. It is a Government that must depend alone for its support upon the affections of the people; and the best security for their affections is to extend to them, upon as large a scale as comports with the public safety, the freedom of choice, and right of representation. In so extensive a country as this, many parts of which are thinly inhabited, and the election districts consequently including vast tracts of territory, it must often happen that the electors are entirely unacquainted with the person for whom they vote; but if you increase the representation, you reduce the size of the election districts; you bring the candidate within the very neighborhood of the electors; they see him, they know him; they are better enabled to estimate truly his character, and judge of his capacity and disposition to serve them. This, sir, will secure, in a great degree, the constituent from imposition, and attach to the Representative a higher and more immediate responsibility; it will inspire the people with confidence in your Government, and induce them more cheerfully to acquiesce in your laws. But, above all, sir, the divisor of thirty thousand leaves throughout the United States a less aggregate of unrepresented fractions than any divisor you can take; less, permit me to say, sir, by one hundred and sixteen thousand, than the one contemplated in the bill; and I am sure gentlemen on all sides of the House wish the country as fairly represented as possible. To my mind this is a most conclusive argument in favor of the divisor of thirty thousand.

I am told, sir, that this has been made a party question; that party considerations influence it. What could have induced to this, is not for me to say; I will attribute no improper motives to any honorable gentleman, but it has not pleased God to bless me with sagacity enough to discover anything in it that even savored of party. Sir, parties have already attained in this country a sufficient height, not only for our happiness but for our safety; and it argues but a small regard for the public good, to stamp every subject with that complexion. If this question involves any separate interests, they are those, sir, of the smaller and larger States. With the former, then, the cause I advocate is a common cause, and I am sure gentlemen will give it due consideration, and not suffer any party feelings, however disguised, to influence them. Sir, a doctrine has of late been publicly avowed, which I must be permitted to notice, as, in my estimation, extremely hostile to the rights of the smaller States; it is said that the House of Representatives is not their ground, that they must look to themselves in the Senate, and take care on this floor that sovereignties are not destroyed. I hope gentlemen representing the smaller States will profit by this warning; it is well worth their attention; it comes, sir, from the largest and most influential State in the Union. The point it leads to, I presume not to say, and fear, sir, even to conjecture.

The question was now taken on the motion to strike out 33,000, and lost—ayes 11. noes 15.

Mr. MORRIS then moved, and Mr. TRACY seconded the motion to add, after "one representative for every 33,000," the words "and one representative for every fractional number of 27,000 persons;" The number 27,000 was used to avoid a violation of the Constitution, which prohibits the allotting to each State more representatives than one for every 30,000. Thus, in the case of Delaware, the ratio being 33,000, Delaware would be entitled to one member for 33,000, and one for the fraction of 27,000: both which numbers would amount to 60,000; which last number entitled a State to two members without violating the Constitution. This motion was opposed by Messrs. WRIGHT and ANDERSON, and was lost—ayes 10, noes 15.

On the question to agree to the final passage of this bill, it was determined in the affirmative—yeas 23, nays 5, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Chipman, Cocke, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, Logan, S. T. Mason, J. Mason, Morris, Nicholas, Sheafe, Stone, Sumter, and Wright.

NAYS—Messrs. Hillhouse, Olcott, Tracy, Wells, and White.

The bill was then read a third time, and passed.

TUESDAY, January 12.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

I now communicate to you a letter from the Secretary of State, enclosing an estimate of the expenses which appear at present necessary for carrying into effect the Convention between the United States of America, and the French Republic, which has been prepared at the request of the House of Representatives.

TH: JEFFERSON.

JANUARY 12, 1802.

The Message and papers accompanying it were read, and ordered to lie for consideration.

JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th instant, "That the act of Congress passed on the 13th day of February, 1801, entitled 'An act to provide for the more convenient organization of the Courts of the United States,' ought to be repealed."

Mr. JACKSON, of Georgia.—I rise with an impression of awe on the present question; for we must tread on Constitutional ground, which should not be lightly touched on, nor too hastily decided. Every step we take ought to be well examined, and our minds convinced before we give that vote which cannot be recalled, and which will fix a principle on Legislative construction, which, perhaps, will prevail as long as we remain a nation.

In the early stage of this discussion, I had almost determined to say nothing, and am at pres-

ent determined not to say much; but a justification of the vote I shall give, has impelled me to offer my reasons for it to the State I represent; and I have made up my mind, decidedly, to vote for the resolution before you, if I cannot be otherwise convinced.

I conceive, that as this subject requires from us a legislative construction, that construction may as well, and indeed better, be now made; there will undoubtedly hereafter be a clashing of powers. I therefore think it is much better to decide it now, when the injury is felt, than to suffer it to take root until it shall extort a different and more violent decision than that of a deliberative body.

The reasons for the resolution have been so ably stated, and strongly enforced, by the gentleman from Kentucky who moved it, as to expediency, and the burden of the expenses on the present system, that I shall therefore say little about them.

The expenses, however, of the Judiciary establishment, I deem the least important consideration attached to the subject. Yet, I do not agree with the gentleman who has spoken, that the expense is trifling. The gentleman from New-York had held up the insignificance of a cent a person, and had told us of Alfred's purse, which no one dared to take away. Let that gentleman calculate twelve souls to a family, and he will see that each family would pay twelve cents; a sum, however insignificant to the pocket of that gentleman, that might furnish a comfortable meal to a poor family. With the gentleman from Kentucky, however, I contend that the principle is as much settled by one cent as by a million. And this observation becomes incalculably dangerous, if it is to be drawn into precedent on every new project or improper measure, that it costs but a cent a person. And as to the remarks about Alfred, I might retaliate upon the gentleman, and say, that at that day twelve cents might have been a year's salary for a judge.

We have been asked, if we are afraid of having an army of judges? For myself, I am more afraid of an army of judges, under the patronage of the President, than of an army of soldiers. The former can do us more harm. They may deprive us of our liberties, if attached to the Executive, from their decisions; and from the tenure of office contended for, we cannot remove them; while the soldier, however he may act, is enlisted, or if not enlisted, only subsisted for two years; whilst the judge is enlisted for life, for his salary cannot be taken from him. [See 12th division, 8th Sect. 1st Art. Constitution.] Sir, it is said these evils will not happen. But what security have we for the truth of the declaration? Have we not seen sedition laws? Have we not heard judges crying out through the land, sedition! and asking those whose duties it was to inquire, is there no sedition here? It is true, the sedition law had expired with the last Administration, and he trusted it would not exist, or at least be acted on, under the virtuous Jefferson. But hereafter if it should exist, your judges, under the cry of sedition and political heresy, may place half your citizens in irons. I thank God, that no such law now exists, or is likely to exist. I thank God, that we are not now under the influ-

ence of an intolerant clergy, as is evident from their abuse of the President; and that we are not under dread of the patronage of judges, is manifest, from their attack on the Secretary of State. And I trust, that we shall long keep this patronage off, by not sanctioning the religious persecution of the clergy on the one hand, nor the political violence of the judges on the other.

But I will forbear making any further remarks of this kind, and go into an examination of the Constitutional grounds.

[Mr. J. here quoted the third article, first section of the Constitution.]

Here then, said he, are two tribunals. First, the Supreme Court, the creature of the Constitution, the creature of the people; the other, the inferior jurisdictions, the creature of the Legislature. And notwithstanding the play of gentlemen upon the words shall and may, they are in meaning essentially different. The word *shall*, applied to the Supreme Court, is imperative and commanding, while the word *may*, applied to the inferior courts, is discretionary, and leaves to the Legislature a volition to act, or not to act, as it sees fit.

Again, why are the peculiar and exclusive powers of the Supreme Court designated in the following section of the Constitution, but because the Constitution considered that tribunal as absolutely established; while it viewed the inferior tribunals as dependent upon the will of the Legislature? And that this was the case was evident from the conduct of the Supreme Court on the pension act, which that court had some time since declared unconstitutional; and which declaration, he was convinced, would not have been hazarded by an inferior tribunal.

But does this conclusion rest on judicial power alone? Is it no where else found under other heads of Constitutional power? Yes, sir, under the Legislative head of power, which is the first grant of power made by the Constitution. For by the eighth section of the first article of the Constitution, after enumerating the power of laying taxes, &c., it is declared in the ninth division thereof, "to extend to constitute tribunals inferior to the Supreme Court." Here, then, is a Legislative power given expressly to that body, without restriction or application to any other branch of the National Government. Let those lawyers who hear me decide on the construction of all grants or deeds, if two grants be made in the same deed to two different powers or persons, if the first does not exclusively vest?

Is there a single argument that can be assigned to oppose this construction of the Constitution? Do not the observations of gentlemen, who insist upon the permanent tenure of the Judicial office, place the creature above its creator, man above his God, the model above its mechanic? A good mechanic, when he constructs a machine, tries it; and if it does not succeed, he either mends it or throws it away. Is there not the same necessity for acting in the same way with the inferior tribunals of the Judiciary, which is no other than the machine of the Legislature?

But, upon the principles of gentlemen, the law

JANUARY, 1802.

Judiciary System.

SENATE.

which creates a judge cannot be touched. The moment it is passed, it exists to the end of time. What is the implication of this doctrine? To alter or amend what may greatly require alteration or amendment, it is necessary to return to the creator, and to inquire what this creator is. My principle is, that the creator is the people themselves; that very people of the United States whom the gentleman from New York had declared ourselves to be the guardians of, to save the people themselves from their greatest enemies; and to save whom from destroying themselves he had invoked this House. Good God! is it possible that I have heard such a sentiment in this body? Rather should I have expected to have heard it sounded from the despots of Turkey, or the deserts of Siberia, than to have heard it uttered by an enlightened legislator of a free country, and on this floor.

But, said Mr. J., let us examine how we are to get at the creator. If the honorable gentleman will put us into the way of doing this with effect, I will abandon all my arguments for this motion. Look to the Constitution, and see how it is to be amended. It can only be amended on the recommendation of two-thirds of both Houses, or, on the application of two-thirds of the States, a convention shall be called, who are to propose amendments, afterwards to be ratified by three-fourths of the States.

There is required first, then, two-thirds of both Houses of Congress. Can this two-thirds be found now, or is there any probability of its being found for twenty years to come, who will concur in making the necessary alterations in the Judiciary system that are now, or may hereafter, be required? On this subject there are as many opinions as there are persons on this floor. I have indeed never found two persons precisely agree. How, then, can we expect three-fourths of the Legislatures of the several States to agree when we cannot agree among ourselves. There is, in fact, no amendment which could reach the case, and exhibit to view all the requisite and necessary regulations for such an extent of country. Such an attempt must form a volume, a Constitution by itself, and after all fall short of the object.

I am clearly, therefore, of opinion, that if the power to alter the Judiciary system vests not here, it vests nowhere. It follows, from the ideas of gentlemen, that we must submit to all the evils of the present system, though it should exhibit all the horrors of the Inquisition.

But, said Mr. J., gentlemen say the United States embrace a vast extent of territory, from fifteen to seventeen thousand miles in length. What is the inevitable deduction to be drawn from this fact? Why, that a system which is to apply to this extent of country, embracing different laws and different habits, will require frequent alterations: whereas, if we are tied down to a system of inferior tribunals once formed, we cannot even touch the plan of the Judicial system of the little District of Columbia. Nor can we touch the inferior jurisdictions in the Northwestern Territory, or in the Mississippi Territory, in both of which

the systems were acknowledged to be adapted only to present circumstances, and in the last of which the rights of Georgia were implicated. It follows, that whatever these rights may be, the system is sacred; and, as to the Mississippi Territory, if grounded on this doctrine, notwithstanding the claim of Georgia, her jurisdiction is totally lost. To revert to the sedition law. If the doctrine supported now were true, then, had the sedition law been incorporated as a system by itself, an inferior tribunal, and officers been attached to it, would it have been perpetually tacked to the Constitution? That law under which so many of our citizens have been imprisoned for writings and speakings; and one, among others, for wishing that the wadding of a gun had been lodged in a certain Presidential part.

The gentleman had dwelt on the inconveniences and evils of the old system, and had particularly condemned that part of it, which, as he termed it, had converted the judges into post-boys. But I will appeal to the gentleman, if in England, where so much more business is done, there are more than twelve judges, and whether those judges do not ride the circuit? And why shall our judges not ride the circuits? Shall we have six judges sitting here to decide cases which require a knowledge of the laws, the morals, the habits, the state of the property of the several States? Would not this knowledge be much better obtained by their riding the circuits, and in the States themselves, making themselves acquainted with whatever relates to them, and the cases of appeals to come before them? It has been remarked by a celebrated writer on the English Constitution, that one of the greatest political evils that could befall a people was the existence of large judiciary bodies. To illustrate his ideas, he had instanced the Parliaments of France. If the spirit which last session gave existence to sixteen new judges continued, who could say by what number they would be limited? They might indeed soon become, what they had been likened to, an army of judges.

I do not wish to be severe in my remarks on the conduct of the late Administration. I admire the private character of Mr. Adams. But I do believe the succession of his political acts tended ultimately to accumulate in, and attach all powers to, a particular person or favorite family.

If I wished to bestow on Mr. Jefferson this mass of patronage, which I contend this horde of officers bestows, I should be in favor of the bill that it is now moved to repeal; but, as a political person, I am no more for Thomas Jefferson than for John Adams. When he acts, according to my opinion, right, I will support him; when wrong, oppose him; and I trust a majority on this floor will act in the same way.

A gentleman from Massachusetts has asked if suits will go on diminishing, and if the millenium is so near at hand? Sir, different opinions are held on this subject; for some suppose the millenium to have arrived long since, and others that it may arrive, and others again that it never would arrive; but there is one thing certain, that the more courts

you have, the greater temptation there is for litigation, and more suits, or rather evils, will flow from them. Law itself is but a necessary evil; for if mankind were perfect—were it not for their frailties and passions—there would be no occasion for it; and lawyers are a still greater evil, although, he acknowledged, a necessary one. They seldom discourage litigious suitors, and swarm in our courts; and there are here, as well as in every other country, persons so fond of law, and of persecution, that rather than not be in courts at all, they would direct their lawyers, as I have been formerly told of a man who applied for advice, and was informed he had no ground of action, to bring, then, a spite action. The State courts are open and competent to most of the inferior court business, and it ought to be thrown into that channel as much as possible.

With respect to the usefulness of the additional judges, created by the act of last session, it was, perhaps, unnecessary to add anything to what had been so ably observed by the gentleman from Kentucky. But I will state, for the information of the Senate, that in the Southern States of Georgia, South and North Carolina, a ground of great litigation is removed, one which had originated at least two hundred and fifty suits. Miller & Co. had obtained a patent for a ginning machine (God knew where it came from, but I believe that neither of them invented it) so as to make those States tributary to them, and embroil them in disputes. South Carolina had purchased that patent for \$50,000, and had therefore dried up this source of litigation in that State.

The recovery of British debts, too, was nearly over. This had been a fruitful source of litigation. Our citizens had been sued, and their late hard earnings of property had been seized to satisfy British demands, whilst their former property had been taken from them by British arms during the war.

I am surprised to hear the cry, that our liberties and the Constitution are endangered, from the quarter from whence it is now urged. When such remarks had been made by those gentlemen with whom I generally acted on former occasions, the instantaneous cry was against demagogues, who, by artfully inflaming the passions of the people against the Government, wished to break down the Constitution.

A gentleman had talked about a victory meditated over the Constitution. Not by the President; not by us. By whom then was it meditated? Was it by the House of Representatives? Or was it by the people themselves—that same people whom we were to save from their greatest enemy, themselves? For my part, I believe in the meditation of no such victory. Sooner, for my part, than participate in it, by voting for this resolution, if I thought it would have such a tendency, I would cut off my hand, or cut out my tongue. I respect and love the Constitution, and my great wish is, with father Paul, to cry out, as respects it, *esto perpetua*.

Mr. TRACY, of Connecticut.—Feeble as I am, I have thought it my duty to offer my sentiments

on this subject. Owing to severity of indisposition I have not been in my place, nor have I heard any of the discussion. This circumstance will be my apology, if, in the remarks I shall make, repetitions shall occur on the one hand, and apparent inattention to arguments on the other.

Having been a member of this Government during several years, and being impressed with the difficulties attending the formation of a judiciary system, I have thought proper to give a concise history of Legislative proceedings on this important subject. Permit me to say, sir, that the first institution of such a system must be an experiment. It is impossible to ascertain until tried the effects of a system co-extensive with the vast territory of the United States, and which ought to be adapted to the different laws and habits of the different States.

Soon after the first law was enacted, as early as the year 1793, and I believe sooner, complaints were made of the system of circuit courts. The Union then being divided into three circuits, and two of the six judges were obliged to attend each court, if one judge failed, all the business of course was continued to the next term. Judges complained of the distance they had to travel, and suitors and lawyers complained of delays. In 1793, if my memory is correct, the law passed allowing one judge to attend with the district judge in each district, with some other modifications not important in the present view of the subject. If, by reason of distance, badness of roads, sickness, or any other accident, this one judge failed of attendance, or if he and the district judge differed on any point, a delay was occasioned. If the same judge attended the same circuit at the next term, another delay, and so on, till experience taught us, that some alteration in the system was requisite. It will be recollected, that the judges had to travel over this extensive country twice in each year, and to encounter the extremes of both heat and cold. Of this they complained; but this was not all; the business was not done.

At several sessions of Congress, the subject of the circuit courts was before them; committees were appointed in both Houses, and in more than one communication of the Executive at the commencement of sessions, a revision of the system was recommended. I cannot, on memory, detail the exact particulars, or order of time; but in the Speech made by the President at the opening of the session of 1799, the subject is stated as follows:

“To give due effect to the civil administration of Government, and to insure a just execution of the laws, a revision and amendment of the judiciary system is indispensably necessary. In this extensive country, it cannot but happen, that numerous questions respecting the interpretation of the laws, and the rights and duties of officers and citizens, must arise. On the one hand, the laws should be executed—on the other, individuals should be guarded from oppression; neither of these objects is sufficiently assured, under the present organization of the judicial department; I therefore earnestly recommend the subject to your serious consideration.”

JANUARY, 1802.

Judiciary System.

SENATE.

Although this subject had been recommended before, and committees had contemplated a revision and alteration of the system, I do not remember that a bill had ever been presented to either House of Congress until 1799. In that session, a bill was reported similar in its features to the act which passed last session. It might have been acted upon in the House of Representatives; of this however I am not confident; but I recollect it was printed, and the members of both Houses had it before them; and at the last session, with some alterations and amendments, it was enacted into a law. I believe all parties wished for a revision and amendment of the system, in respect to circuit courts; the difference of opinion was principally this: some supposed an increase of the judges of the Supreme Court to such a number as would render the duties of the circuit practicable for them, and provide for the completion of business, would be the best amendment; the others thought the law, as it passed, was preferable.

I acknowledge, that in deliberating upon this subject, we always assumed the principle, that the establishment of courts was important to protect the rights of the people; we did not fear an army of judges, as has been hinted by the gentleman last up, (Mr. JACKSON.) In this opinion we might be mistaken, but we were honest in our professions. Although some believed, that more of the business of the United States might be confided to the State courts; yet it is not within my recollection, that the question was considered in any measure a party question. I am confident, that at the session of 1799, and for a long time before that, the friends of this law, which eventually passed last Winter, could not, nor did not, contemplate any change of administration. A revision of the system was long a subject of deliberation; we believed an increase of circuit judges, to the number requisite to perform the duties, would be an inconvenient increase of the Supreme Court; and though it was desirable for the judges of the Supreme Court to see the people and be seen of them, yet the preference was given to the system now proposed to be repealed. We supposed it would be an evil to increase the number of judges of the Supreme Court to thirteen, fifteen, or seventeen. A court which is to act together, should not be numerous; on this subject all men have agreed; here may be danger of an "army of judges," as the gentleman says; for although in Great Britain the twelve judges are sometimes called to give an opinion, yet no man will feel equal confidence in a tribunal of judges for the business of a court, consisting of many as of few; from three to five, the good sense and experience of all nations has declared to be about the proper number; and we thought it conducive to the general good, to establish tribunals in such manner as to carry justice to the door of every man.

In this modification of the system, the jurisdiction of the circuit court has been extended, as it respects the sum in demand, of which they are to take cognizance, and as it respects the disputes which arise concerning the title of lands; and exclusive jurisdiction is given of all crimes com-

mitted within fifty miles of their place of session. The intention was, to insure a prompt execution of justice, and experiment alone can test the wisdom of the plan.

I take it to be a sound rule, adopted by all wise and deliberate bodies, not to repeal an existing law, until experiment shall have discovered errors, or unless there is a vice so apparent on the face of the law, as that justice shall require an immediate destruction of it. Has there been time to gain information by experiment? No man will pretend this as a justification of the repeal; for the little time the law has been in force, so far as I have obtained any knowledge upon the subject, it has gained credit.

Another maxim in legislation, I think, is correct, not to give up a law in existence, which is conversant about extensive and important concerns of the community, and about which there is a necessity of enacting some law, without seeing clearly what can be substituted for it, and that the substitute has manifest advantages. This resolution leads to no result, but a repeal. I have stated the errors of the former system of circuit courts, and if expense is an objection to the present system, as I have heard urged out of doors, the same, or nearly as much, must be incurred, if we increase the number of judges of the Supreme Court, as to effect a reform in the Circuit Court. Why repeal this law then, and leave us without any, or without any adequate to its purpose?

Is this system so very vicious, that it deserves nothing but abhorrence and destruction? It costs us a little more than thirty thousand dollars, and by it the number of circuit judges is increased to sixteen; and by it likewise is contemplated reducing the number of supreme judges to five, when it can constitutionally be done. Is the expense an object, when by that expense we extend the jurisdiction of a court over this vastly extensive, growing country, and carry law and protection to every man? This country is in a singular condition; a great tract of unsettled lands is peopling with rapidity, and numerous emigrations increase our population far beyond its natural increase; is it not of importance that courts should be located among them, early, to correct the restless spirit which is frequent in new and scattered settlements? And are not the emigrations composed of such as require the prompt assistance of the law, to preserve among them regularity? Punishment, to us, and to all good men, should be a strange work; but to prevent crimes, is the work of a God. I speak to gentlemen, who have many of them graced the judge's bench, and adorned the professional robe they have worn, and am therefore not obliged to be particular that I may be understood; a word to the wise will be sufficient. A judiciary, in a national point of view, is absolutely necessary, and an extension of it to every national purpose is equally necessary. To depend upon State courts, not under obligations nor amenable to you, besides having as much business allotted to them by the respective States as they can accomplish, and depending upon them, and not on us, for existence—will require only to be mentioned, to be exploded. Locating your

judges in various parts of the country, by them promulgating the national laws, which it is well known has been a subject of great difficulty, and giving them daily opportunity of mixing with people, not well disposed to order and law; may prevent disorders and insurrections, and save millions of expense, which pecuniary saving will be the least of the important events arising from such a system.

But it will probably be said, the courts have not business to employ them; and the documents received from the Executive will be produced in evidence. And it may further be said, the President has in his Message recommended a repeal of this law. The words of the Message are: "The Judiciary system of the United States, and especially that portion of it lately erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several States, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those that were depending when additional courts and judges were brought in to their aid."

Is this a recommendation to repeal? Suppose for argument's sake it is. Let us look at this "exact" statement. In the recapitulation, 19th page of document 8, there appears to have been instituted 8,276 suits, and pending, when this court went into operation, 1,539. But on further inspection it will be found, that Maryland is entirely omitted; this omission is unaccountable, since the means of knowledge were so near at hand.—119 causes undecided in Tennessee; 134 in North Carolina, and 331 in Virginia, are omitted; making in the whole an error of five or six hundred causes. In addition to this, the number of suits in New York are not stated correctly by the statement of the attorney when he made the return, and not one is carried out as pending in the recapitulation; and the return of Massachusetts is incorrect on its face; so that nothing more than conjecture can be derived from this "exact" statement. The President is usually more correct, and how this peremptory language in the Message comports with the document, every man can see for himself. I am not disposed to attribute intentional error to any man, much less to the Executive; but in point of use the statement amounts to nothing; we may just as well imagine without it as with it, how many suits were pending at the institution of the new courts.

But I acknowledge that the number of suits pending is not in my mind any criterion upon which a correct judgment may be formed of the utility or necessity of courts; or, to say the most of it, it forms but one ground of judging, and that not a very conclusive one. In a country thinly settled it is frequently as important to establish courts as in a more populous country; and as this Government is situated, it may be more so; and yet the number of suits will bear no proportion. Why did we establish courts in our territorial government but on this principle?

A number of courts properly located will keep the business of any country in such condition as but few suits will be instituted; and courts badly organized will discourage suitors, and there will be but few actions returned. From the number of suits alone, there can no sound judgment be formed.

But there is another objection to the repeal of the judiciary law, which in my mind is conclusive: I mean the letter and spirit of the Constitution.

In the formation of every Government, in which the people have a share in its administration, some established and indisputable principles must be adopted. In our Government, the formation of a Legislative, Executive and Judiciary power, is one of the incontrovertible principles; and that each should be independent of the other, so far as human frailty will permit, is equally incontrovertible. Will it be expected, that I should quote Sidney, De Lolme, Montesquieu, and a host of elementary writers, to prove this assertion? There is probably no conflict of opinion upon this subject. When we look into our Constitution of Government, we shall find, in every part of it, a close and undeviating attention to this principle. Our particular form is singular in its requirements, that full force and operation be given to this all important principle. Our powers are limited, many acts of sovereignty are prohibited to the National Government, and retained by the States, and many restraints are imposed upon State sovereignty. If either, by accident or design, should exceed its powers, there is the utmost necessity that some timely checks, equal to every exigency, should be interposed. The Judiciary is established by the Constitution for that valuable purpose.

In the British Government, the legislature is omnipotent to every legislative effect, and is a perpetual convention for almost every Constitutional purpose. Hence it is easy to discern the different part which must be assigned to the judiciary in the two kinds of government. In England the Executive has the most extensive powers; the sword or the military force; the right of making war, and in effect the command of all the wealth of the nation, with an unqualified veto to every legislative act. It is, therefore, rational for that nation to preserve their judiciary completely independent of their Sovereign. In the United States, the caution must be applied to the existing danger; the Judiciary are to be a check on the Executive, but most emphatically to the Legislature of the Union, and those of the several States. What security is there to an individual, if the Legislature of the Union or any particular State, should pass a law, making any of his transactions criminal which took place anterior to the date of the law? None in the world but by an appeal to the Judiciary of the United States, where he will obtain a decision that the law itself is unconstitutional and void, or by a resort to revolutionary principles, and exciting a civil war. With a view to those principles, and knowing that the framers of our Constitution were fully possessed of them, let us examine the instrument itself. Article third,

JANUARY, 1802.

Judiciary System.

SENATE.

section first: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office." Are there words in the English language more explicit? Is there any condition annexed to the judge's tenure of office, other than good behaviour? Of whom shall your judges be independent? We are led to an erroneous decision on this, as well as many other governmental subjects, by constantly recurring to Great Britain. That their courts should be independent of their Sovereign is an important object; he is the fountain of honor and power, and can do no wrong; our President, at least for several years past, has been considered as the fountain of dishonor and weakness, and if there was any maxim upon the subject, it was that he could do no right. Of course the great object of the independence of the Judiciary must here have reference not only to our Executive, but our Legislature. The Legislature with us is the fountain of power. No person will say that the judges of the Supreme Court can be removed, unless by impeachment and conviction of misbehaviour; but the judges of the inferior courts, as soon as ordained and established, are placed upon precisely the same grounds of independence with the judges of the Supreme Court. Congress may take their own time to ordain and establish, but the instant that is done, all their rights of independence attach to them.

If this reasoning is correct, can you repeal a law establishing an inferior court, under the Constitution? Will it be said, that although you cannot remove the judge from office, yet you can remove his office from him? Is murder prohibited, and may you shut a man up, and deprive him of sustenance, till he dies, and this not be denominated murder? The danger in our Government is, and always will be, that the Legislative body will become restive, and perhaps unintentionally break down the barriers of our Constitution. It is incidental to man, and a part of our imperfections, to believe that power may be safely lodged in our hands. We have the wealth of the nation at command, and are invested with almost irresistible strength; the judiciary has neither force nor wealth to protect itself. That we can, with propriety, modify our judiciary system, so that we always leave the judges independent, is a correct and reasonable position; but if we can, by repealing a law, remove them, they are in the worst state of dependence.

I have exhausted myself, and I fear, the patience of the Senate, and regret exceedingly that my indisposition prevented me from a better preparation upon this important question. I have attempted to show, that the establishment of a judiciary system for this country is, and must be, attended with difficulties; and that the Legislature have taken such measures as to a majority of them appeared most reasonable, after much attention to the sub-

ject, to cure the evils of the old system, by the substitution of a new system.

And let it be remarked, that the law now under consideration, although it modified our courts, is strictly guarded against a violation of the principles I have here contended for. The Supreme Court is to consist of but five judges after the next vacancy shall happen; and the district judges of Tennessee and Kentucky are associated with a circuit judge, to perform the duties of circuit judges, which duties it is well known they performed ever since the district courts were established; and in the clause which increases their salaries, they are styled the district judges; and all the alteration made in their circumstances, is, an increase of duty, and of salary. I have attempted to show the primary necessity of rendering the Judiciary of this confederated Government completely independent, not only of the Executive, but especially so of the Legislature.

And by adverting to the words of the instrument itself, I have attempted to show, that the Judiciary are secured, so far as words can do it, as well from a circuitous removal, by repealing the law constituting the court of which they are judges, as by any direct removal.

I am strongly impressed with the magnitude of this subject; perhaps the whims of a sick man's fancy have too much possessed me, to view it correctly; but, sir, I apprehend the repeal of this law will involve in it the total destruction of our Constitution. It is supported by three independent pillars; the Legislative, Executive and Judiciary; and if any rude hand should pluck either of them away, the beautiful fabric must tumble into ruins. The Judiciary is the centre pillar, and a support to each by checking both; on the one side is the sword, and on the other is the wealth of the nation; and it has no inherent capacity to defend itself.

These very circumstances united, may provoke an attack, and which ever power prevails so far as to vest in itself, directly or indirectly, the power of the Judiciary, by rendering it dependent, it is the precise definition of tyranny, and must produce its effects. The Goths and Vandals destroyed not only the Government of Rome, but the city itself; they were savages, and felt the loss of neither; but if it be possible there can be an intention, like the son of Manoa, with his strength, without his godliness, to tumble this fabric to the earth, let it be remembered it will crush in one undistinguished ruin, its perpetrators, with those whom they may call their political enemies.

I most earnestly entreat gentlemen to pause and consider. I apprehend the repeal of this act will be the hand-writing on the wall, stamping *Mene Tekel* upon all we hold dear and valuable in our Constitution. Let not the imputation of instability, which is cast upon all popular bodies, be verified by us—in adopting laws to-day, and repealing them to-morrow, for no reason, but that we have the power, and will exercise it.

This Constitution is an invaluable inheritance; if we make inroads upon it and destroy it, no matter with what intentions, it cannot be replaced; we shall never have another.

WEDNESDAY, January 13.

THE JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th inst. that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed.

Mr. MASON, of Virginia.—I feel some degree of embarrassment in offering my sentiments on a subject so fully and so ably discussed. I believe that the ground taken by my friend from Kentucky has not been shaken by any arguments urged in opposition to the resolution on the table. Yet as some observations have been made, calculated to excite sensibility, not here, but abroad; as they appear to have been made with a view to that end; and as an alarm has been attempted to be excited on Constitutional ground, I think the observations ought not to go unnoticed.

I agree with gentlemen, that it is important, in a well regulated Government, that the judicial department should be independent. But I have never been among those who have carried this idea to the extent which seems at this day to be fashionable. Though of opinion that each department ought to discharge its proper duties free from the fear of the others, yet I have never believed that they ought to be independent of the nation itself. Much less have I believed it proper, or that our Constitution authorizes our courts of justice to control the other departments of the Government.

All the departments of a popular Government must depend, in some degree, on popular opinion. None can exist without the affections of the people, and if either be placed in such a situation as to be independent of the nation, it will soon lose that affection which is essential to its durable existence.

Without, however, going into an inquiry of what kind of organization is most fit for our tribunals; without inquiring into the fitness of making the judges independent for life, I am willing to enter into a consideration, not of what ought to be, but of what is. Whatever opinion I may individually entertain of the provisions of the Constitution relative to the Judiciary, sitting here under that Constitution, I am bound to observe it as the charter under which we are assembled.

When I view the provisions of the Constitution on this subject, I observe a clear distinction between the Supreme Court and other courts. I am sensible that when we come to make verbal criticisms, any gentleman of a sportive imagination may amuse our fancies by a play upon words. But this is not the way to get rid of a genuine construction of the Constitution. With regard to the institution of the Supreme Court, the words are imperative; while, with regard to inferior tribunals, they are discretionary. The first shall, the last may be established. And surely we are to infer from the wise sages that formed that Constitution, that nothing was introduced into it in vain. Not only sentences, but words, and even

points, elucidate its meaning. When, therefore, the Constitution, using this language, says a Supreme Court shall be established, are we not justified in considering it as of Constitutional creation? And on the other hand, from the language applied to inferior courts, are we not equally justified in considering their establishment as dependent upon the Legislature, who may, from time to time, ordain them, as the public good requires? Can any other meaning be applied to the words "from time to time?" And nothing can be more important on this subject than that the Legislature should have power, from time to time, to create, to annul, or to modify the courts, as the public good may require, not merely to-day, but forever; and whenever a change of circumstances may suggest the propriety of a different organization. On this point, there is great force in the remark of the gentleman from Georgia, that among the enumerated powers given to Congress, while there is no mention made of the Supreme Court, the power of establishing inferior courts is expressly given. Why this difference, but that the Supreme Court was considered by the framers of the Constitution, as established by the Constitution, while they considered the inferior courts as dependent upon the will of the Legislature.

We find the phrase, "from time to time," in another part of the Constitution. The 3d section of the 2d article says, the President shall, from time to time, give to the Congress information of the state of the Union. That is, he shall occasionally, as he sees fit, give such information. So shall Congress occasionally, as they see fit, establish annual or regulate inferior courts, accordingly as the public welfare requires.

The arguments of gentlemen go upon a mistaken principle. They express the liveliest sympathy and commiseration for this poor, this weak department of our Government. They tell us the judges have a vested right to their offices—a right not now derived from the law, but from the Constitution; and they assimilate their case to that of a public debt; to the right of a corporation; a turnpike company, or a toll-bridge. But is not all this reasoning predicated on the principle that the courts are established, not for the public benefit, but for the emolument of the judges; not to administer justice, but for their personal aggrandizement? I believe that a Government ought to proceed upon different principles. It ought to establish only those institutions which the good of the community requires; when that good ceases to need them, they ought to be put down, and, of consequence, the judges should hold their appointments so long, and no longer, than the public welfare requires.

If the arguments now urged be correct, that a court once established cannot be vacated, we are led into the greatest absurdities. Congress might deem it expedient to establish a court for particular purposes, limited as to its objects or duration. For instance: the United States has taken possession of the Mississippi Territory, rightfully or not, I will not pretend to say. This territory has been heretofore in the hands of various masters, viz:

JANUARY, 1802.

Judiciary System.

SENATE.

France, England, Spain, and Georgia; and it is now possessed by the United States. All these Governments, except the United States, made certain grants of lands in the territory, and certain settlers spread their conflicting patents over the country. These different titles will open a wide field for litigation, which will require able tribunals to decide upon. Suppose, then, Congress should establish special tribunals to continue for three, four, or five years, to settle these claims. Judges would be appointed. They would be the judges of an inferior court. If the construction of the Constitution now contended for be established, what would the judges say, when the period for which they were appointed expired? Would they not say, we belong to inferior courts? Would they not laugh at you when you told them their term of office was out? Would they not say, in the language of the gentleman from New York, though the law that creates us is temporary, we are in by the Constitution? Have we not heard this doctrine supported in the memorable case of the mandamus, lately before the Supreme Court? Was it not there said that, though the law had a right to establish the office of a justice of the peace, yet it had not a right to abridge its duration to five years; that it was right in making the justices, but unconstitutional in limiting their periods of office; that, being a judicial officer, he had a right to hold his office during life—or, what is the same thing—during good behaviour, in despite of the law which created him, and in the very act of creation limiting his official life to five years.

I may notice another case, more likely to happen, to show the absurdity of this construction. Congress have assumed jurisdiction over the Mississippi Territory, and have established a court, composed of three judges, which court is as much an inferior court as the circuit or district courts. Of this jurisdiction Georgia denies the validity. The contest is in a train of settlement. Suppose it shall turn out that the United States are convinced of the injustice of their claim, relinquish it, and restore the territory to Georgia, what becomes of the judges? Their offices, their duties, are gone! Yet they will tell you, we are vested with certain Constitutional rights, of which you cannot deprive us. It is true the territory is no longer yours. You have no jurisdiction, and we have no power, yet we are judges by the Constitution. We hold our offices during good behaviour, and we will behave well as long as you will let us. Is not this a strange situation? You have judges in a territory over which you have no jurisdiction; and you have officers which are perfect sinecures, pensioners for life. Such an absurdity I am sure the Constitution never meant to justify. It is an absurdity equally repugnant to the letter and the genius of the Constitution.

Suppose another case. Suppose, what I trust will never happen, a war should take place. Suppose that a part of the United States should be conquered, and that we should be compelled to cede it to a foreign nation. In this district your jurisdiction is gone; your power is gone; the of-

fice of a judge is destroyed, and yet the officer holds his appointment for life; this case may be considered as inapplicable to the United States. It may be said that we have no right to cede a State, or a part of a State. But I believe a different sentiment has been entertained, and perhaps in this House.

But suppose this event to occur in relation to territory not attached to a State. Suppose the Government should find it necessary to establish an inferior court in an island of Lake Superior. Suppose it should be the fortune of war to place in the possession of the enemy, one of the States, and the question shall be, will you give up this territory in the frozen regions of the Lakes; or suffer the State to remain in the possession of the enemy, you being unable to take it from him? If you give up the territory, your court is annihilated, yet the judges claim a tenure in their offices for life; and this in a country that no longer belongs to you: does not such a result strike every mind as absurd? Is it not apparent, that whatever claim such men might have upon the generosity of the Government, they can have no claim to offices that do not exist? Nay, further, it might, upon the construction now contended for, be insisted that the Constitution forbids you to make a peace upon those terms; that by ceding an inconsiderable territory which you did not want, to secure a whole State, you would abolish the office of a judge, which the Legislature had there erected; that this would be an express violation of your Constitution; and therefore you must leave a whole State in the possession of the enemy, unless this judge would give you leave to make terms by resigning his office!

I believe, sir, that we should not differ much, if we came to a proper understanding of the true principle on which this question depends. If we establish the principle that from the nature and essence of the public institutions, they are made for the good of the people, and not for that of the individual who administers them, we shall experience no difficulty. Gentlemen, in speaking of a judge, had emphatically called it *his* office. But it is not *his* office, but the office of the people. He is only the person appointed to perform certain services required by the public good, and when those services are no longer necessary for that public good, his duties are at an end, his service may be dispensed with, and he ought to retire to private life.

The case had been assimilated to a bridge. But he who builds a bridge does a public good, that entitles him to a growing remuneration forever. But here the good is temporary. The truth is, the judge is more like the man who collects the toll, and who receives the promise of an annual payment as long as he discharges his duties faithfully. But a flood comes, and sweeps away the bridge. Will the toll-gatherer, like the judge, contend, that though the bridge is gone, and the owner ruined, that he shall, notwithstanding, receive his compensation for life, though he cannot continue those services for which his annual stipend was to be the compensation and reward?

But it would seem that the argument urged on this occasion, and the general course of our legislation, had been grounded more on the convenience and emoluments of those appointed to office than on grounds of public utility. First, we appointed six judges of the Supreme Court, divided the United States into three circuits, two judges to ride each circuit, in which, with the district judge, to form a court. The law fixed the duties and the compensation, and gentlemen of the first character were ready to accept the places. The salaries indeed had been thought high; in some parts of the Union they were thought enormous. But a little time passed before they complained of the hardships of their duties; and the law was altered, not so much for the public good as for their personal convenience. Where two judges were required to hold a court, one was now declared sufficient. Thus you continued their full salaries, while you lopped off half their duties. Shortly after you assigned them, under the pension law, inconsiderable duties; and they refused to perform them. Thus, while they showed themselves ready to abate of their duties, they adhered to their salaries. Next came the law of last session, which takes away all their duties. It leaves them simply a court of appeals. And what have they got to do? To try ten suits; for such is the number now on their docket, as appears from a certificate just put into my hands; and the average number on their docket amounts to from eight to ten. Thus, for the trial of the immense number of eight or ten suits, you have six judges, one with a salary of four thousand, and five others with salaries of three thousand five hundred dollars each.

I fear, said Mr. M., that if you take away from these judges that which they ought officially to do, they will be induced, from the want of employment, to do that which they ought not to do; they may do harm. They may be induced, perhaps, to set about that work gentlemen seem so fond of. They may, as gentlemen have told us, hold the Constitution in one hand, and the law in the other, and say to the departments of Government, so far shall you go and no farther. This independence of the Judiciary, so much desired, will, I fear sir, if encouraged or tolerated, soon become something like supremacy. They will, indeed, form the main pillar of this goodly fabric; they will soon become the only remaining pillar, and they will presently become so strong as to crush and absorb all the others into their solid mass.

We have been told, that no State in the Union has presumed to touch the Judiciary establishment, except the State of Maryland. I will not answer for others; but with respect to Virginia, I will answer that she has touched it. Her Constitutional provision for the independence of the judges is nearly similar to that of the United States, and yet she has established, modified, and entirely put down particular departments of her system.

[Here Mr. M. went into a particularization of the different changes the Judiciary system of Virginia had undergone.]

After the particularization, Mr. M. proceeded: And yet our judges, who are extremely tenacious of their rights, did not complain. They thought, as I think, that they should not be removed from their offices that others might be placed in them; and that while they did continue in office their salaries should be preserved to them. And I believe the whole of our Constitutional provision amounts to this; that, unlike other officers appointed by the President, they shall not be removed by him; that their salaries shall not be diminished by the Legislature; and that while the Legislature may continue any particular Judicial establishment under which a judge is appointed, he shall hold that appointment in defiance of both the other departments of Government. A judge may say, I am not to be turned out of office by the President on the one hand, or starved by the Legislature on the other. He may say to the Legislature or the President, and to both of them combined, you shall not turn me out of this office as long as it exists, to gratify your enmity to me, or your favoritism to another person; so long as the interest and convenience of the people require this institution, they are entitled to my services; they shall have them, and I will be paid for them to the utmost farthing, in spite of your displeasure or caprice.

Notwithstanding the remarks of gentlemen, I am inclined to think these ideas of the extreme independence of the judges, and the limited powers of the Legislature, are not very old, but that they are of modern origin, and have grown up since the last session of Congress. For in the law passed last session, that very law which it is now proposed to repeal, is to be found a practical exposition in direct hostility with the principle now contended for, which does not betray that sacred regard for the office of a judge, that is, on this occasion, professed: in that very law will be found a clause which abolishes two district courts. The words of the twenty-fourth section say, expressly, "the district courts of Kentucky and Tennessee shall be and hereby are abolished." Will gentlemen tell this House how this express provision came into the act of the last session; and will they say, that though they voted for this law, yet no power exists in the Legislature to abolish a court? It is true, that it has been said, that though you put down two district courts, you promoted the officers, by increasing their salaries and making them judges of the circuit courts; but the fact is, you have abolished their offices; they are judges no longer of the districts of Kentucky and Tennessee; and they are to every purpose, whatever may be their name, in reality circuit judges. Though you have not lessened their salaries, you have deprived them of their offices. However, therefore, gentlemen may calculate as to the benefit or injury done these two judges, the principle is not affected by any result; their offices are gone. It is not enough to say, that though you destroyed their offices, you offered them others with higher salaries. You took away from them, in express terms, their offices, by abolishing the offices. You had stripped them of their offices, you had robbed

JANUARY, 1802.

Judiciary System.

SENATE.

them of their vested right, and then, to make friends, offered them a compensation; but whether the compensation thus offered for the deprivation they had suffered, was really equivalent to their loss, is a mere matter of calculation, and does not affect the Constitutional principle. It is proper, however, to observe, that they were no parties to the proposed compromise, and that indeed they had no choice left them. They were obliged to accept of what you offered them, or have nothing. If they did not agree to become judges of the newly organized circuit courts, they could not remain judges of the district courts, for these courts were absolutely and completely abolished.

Were I, Mr. President, to make a calculation on the comparative increase of duties and additional salary, in the case of one of those gentlemen, (Judge Innes, of Kentucky,) I should have no hesitation to say, that the bargain which has been made without his consent, and without his being a party to it, is a very bad one for him. Knowing, too, his particular situation, I am persuaded that if the law had left him any election between his former and new situation, he would have preferred remaining where he was, and, without a moment's hesitation, he would have rejected your proffered promotion, as it is called. This gentleman resides within a very few miles of Frankfort, where, as District Judge of Kentucky, he held his court. Attached to domestic life, and enjoying all its felicities, engaged in, and pleased with, agricultural pursuits, he was never under the necessity, even during the sessions of the courts, to sleep out of his own bed one night, or to be separated a single day from his family. He could every morning give directions for the management of his farm, and return early enough in the evening to see whether his orders were executed. How is he situated under the change which has been forced upon him? Instead of attending one court, almost at his door, your late law obliges him to attend four; the nearest, at Bairdstown, fifty or sixty miles from home. You oblige him to travel through dreary and inhospitable regions to the Northwestern Territory, something short of an hundred miles; and much greater distances to and through still worse countries, Knoxville and Nashville, in Tennessee. In going from one to the other of those last mentioned places, he will have to pass through the country of the Cherokee Indians, nearly one hundred miles over the Cumberland mountains, where he will be exposed to every inclemency of the weather, without a shelter to retire to, for there is not a house or a hut in the whole journey; a journey in which all travellers are obliged, at all times, and of unavoidable necessity, to sleep one night, at least, and from the fall of rains, and rise of water-courses, often many nights, without a roof to cover them from the beating of the storm; and, moreover, where they are liable at every step to be robbed by the Indians, as I myself experienced passing through that wilderness. Can it be supposed, that the five hundred dollars added to the salary of Judge Innes, should, by a person situated as he was, be deemed a sufficient compensation for the addi-

tional duties, the toils, the dangers, and the deprivations to which that law subjected him? In continuing to serve his country, I am sure he must have been influenced more by a sense of duty than a regard to private interest, or a belief that the change was, in any respect, advantageous to him.

By the seventh section of the law of the last session, which transforms the district into circuit courts, which melts down the judges and recoins them, it is enacted, that there shall be a circuit court, composed of one new circuit judge and two old district judges, to be called the Sixth Circuit. Have you not then established a new office by the destruction of the old one? Have you not done more? Have you not violated the Constitution, by declaring, by law, who shall fill this new office, though the Constitution declares, article second, section two, "That the President shall nominate, and, by and with the advice and consent of the Senate, shall appoint all officers which shall be established by law."

Where were these guardians of the Constitution—these vigilant sentinels of our rights and liberties, when this law passed? Were they asleep on their post? Where was the gentleman from New York, who has, on this debate, made such a noble stand in favor of a violated Constitution? Where was the *Ajax Telamon* of his party, or, to use his own more correct expression, the *faction* to which he belonged? Where was the hero with his seven-fold shield—not of bull's hide, but of brass—prepared to prevent or to punish this Trojan rape, which he now sees meditated upon the Constitution of his country by a wicked *faction*? Where was Hercules, that he did not crush this den of robbers that broke into the sanctuary of the Constitution? Was he forgetful of his duty? Were his nerves unstrung? Or was he the very leader of the band that broke down these Constitutional ramparts?

I shall now, sir, trouble you with a few remarks on the expediency of repealing this law. It has been said, that there is nothing peculiarly disgusting in this law; that there has been no public clamor or excited against it; that it was enacted with solemnity, on calm and deliberate reflection; and that time has not yet been given to test it by experience.

As no member, who has taken part in debate, was a member of this body when the law passed, I will say something of its history. I am not disposed to excite the sensibility of gentlemen, by any remarks which I shall make, or to call up unpleasant recollections of past scenes. But when I hear it said that this law was passed with calmness, after mature reflection, and that we are now, in a fit of passion, going to undo what was thus wisely done, I think it necessary that the public should have a correct statement.

It is true, that under the last Administration when there existed (what I trust will never, in an equal degree, exist again,) an immoderate thirst for Executive patronage, a proposition was made to establish a new judiciary system; a system worse than the present; as it proposed, according to my recollection, thirty-eight judges instead of

sixteen. This law was very near passing. It was, however, rejected in the House of Representatives by a very small majority. But it was circulated as a project of a law among the people. It was illy received. It was thought too rank a thing, and met with general disapprobation throughout the United States, so far as I have been able to learn. After this reception, it was softened down to the plan introduced at the last session. What temper accompanied the progress of the bill in the other House I know not, or, if I did know, would it be proper for me here to say? But with respect to the acts of this body, I am not of opinion they added any dignity to our common course of procedure. The bill was referred to a committee, who, though it was very long, reported it without any amendment. Various amendments were offered, some of which were admitted to be proper. But they were not received. One, indeed, proposed by a member from Connecticut, who was chairman of the committee, and was then hostile to the plan, did pass, in the early stages of the bill, but on the third reading it was expunged. All amendments proposed by the minority were uniformly rejected, by a steady, inflexible, and undeviating majority. I confess that I saw no passion, but I certainly did see great pertinacity; something like what the gentleman from Connecticut had termed a *holding fast*. No amendments were admitted; when offered, we were told, no; you may get them introduced by a rider or supplementary bill, or in any way you please; but down this bill must go; it must be crammed down your throats. This was not the precise phrase, but such was the amount of what was said.

I will say that not an argument was urged in favor of the bill, not a word to show the necessity or propriety of the change. Yet we are told that there was great dignity, great solemnity in its progress and passage!

But there is something undignified in thus hastily repealing this law! in thus yielding ourselves to the fluctuations of public opinion! So we are told!—But if there be blame, on whom does it fall? Not on us, who respected the public opinion when this law was passed, and who still respect it; but on those who, in defiance of public opinion, passed this law, after that public opinion had been decisively expressed. The revolution in public opinion had taken place before the introduction of this project; the people of the United States had determined to commit their affairs to new agents; already had the confidence of the people been transferred from their then rulers into other hands. After this exposition of the national will, and this new deposit of the national confidence, the gentlemen should have left untouched this important and delicate subject—a subject on which the people could not be reconciled to their views, even in the flood-tide of their power and influence; they should have forbore, till agents, better acquainted with the national will, because more recently constituted its organs, had come into the Government. This would have been more dignified than to seize the critical moment when

power was passing from them, to pass such a law as this. If there is error, it is our duty to correct it; and the truth was, no law was ever more executed by the public.

Let it not be said, postpone the repeal till the next session. No—let us restore those gentlemen to private life, who have accepted appointments under this law. This will be doing them greater justice, than by keeping them in office another year, till the professional business, which once attached to them, is gone into other channels.

[Mr. MASON went into an examination of the number of suits depending at the time the law was passed, and particularly the number brought within the twelve months preceding its passage; from the fewness of which, and their being in a state of diminution rather than increase, he inferred the inutility of the additional judges.]

He continued: If, on this review, we find the number of suits decreasing instead of increasing; if the courts then established were found competent to the prompt and faithful discharge of all the duties devolved upon them, the law was unnecessary; and, if unnecessary, the additional expense incurred by it was unnecessary; and all unnecessary expense should be saved. It is true that fifty thousand dollars divided among the people of the United States amounted to but one cent a man; but the principle was still the same. It has been very fashionable of late to justify every unnecessary expense by stating each item by itself, and dividing it among the whole people. In this way every expense is held forth as of little consequence! Gentlemen say, in this case, it is only one cent a man! In the case of the Mausoleum, two hundred thousand dollars came to only four cents a man! In the direct tax, it is only forty cents! They talk of our army, it only comes to a few cents for each person, who may sell as many cabbages to the soldiers themselves as to pay it! So in a navy. In this way are the most extravagant expenses whittled down to a mere fraction. But this kind of Federal arithmetic I can never accede to. It may suit an expensive Government; but it is an imposition upon the people.

It has been urged with some force, by the gentlemen from New York and Connecticut, that the small number of suits is an evidence of the efficacy and ability of our courts of justice. I am willing to admit the force of this remark; but I must apply it very differently from those gentlemen. I must apply it to the state of the dockets when this law passed; and from there being very few at the time, I must infer that the system existing then was an excellent one, as it wielded the power of the laws so effectually, that there was but little necessity for enforcing the law against delinquents.

From the remarks made by the gentleman from Connecticut, it might be inferred that we were about to destroy all our courts, and that we were in future to have no courts. Is this the case? Are we contending for breaking down the whole judiciary establishment? On the contrary, we barely say, the courts you had before the passage of this law were sufficient; return, therefore to them.

JANUARY, 1802.

Judiciary System.

SENATE.

This law, which we wish repealed, imparts no new authorities to your judges; it clothes them with no, additional terrors; it adds not to their axes, nor increases the number of their rods. It only enlarges their number, which was before large enough.

The gentleman from New York has amused himself with a great deal of handsome rhetoric; but I apprehend without bearing much upon the question. There is one idea, however, which he has seized with extacy, the idea of a great State kneeling at the altar of Federal power; and he deplures that this spectacle, the most sublime that his imagination can conceive, is vanished forever. But if he will consult those stores of history with which he so often amuses and instructs his audience, he will find still more splendid humiliations. He will find the proud monarchs of the East, surrounded with all the decorations of royalty, dragged at the chariot wheel of the conqueror. In more modern times he will behold a King of England and of France, one holding the stirrup and the other the bridle, while the Pope mounted his horse. If not contented with the contemplation of these illustrious degradations, he may resort to Sacred Writ, to which he so often appeals; and in the very Book of Judges, he will behold a famous King of Jerusalem, surrounded by three score and ten dependent Kings, picking up the crumbs from under his table, and, what made the humiliation more charming, all these Kings had their thumbs and great toes cut off.

But if the gentleman from New York wishes to be gratified with a more modern idea of sovereign degradation, I would refer him to the memorable threat of an individual, a servant of the people, to humble a whole State, a great State too, in dust and ashes. A State upon her knees before six venerable judges, decorated in party-colored robes, as ours formerly were, or arrayed in more solemn black, such as they have lately assumed, hoping, though a State, that it might have some chance for justice, exhibits a spectacle of humble and degraded sovereignty far short of the dreadful denunciation to which I allude! If the gentleman feels, as I know many do, rapture at the idea of a State being humiliated and tumbled into the dust, I envy him not his feelings. At such a thought I acknowledge I feel humbled. If the degradation were confined to kings and tyrants, to usurpers who had destroyed the liberties of nations, I should not feel much commiseration; but when applied to governments instituted by the people for the protection of their liberties, and administered only to promote their happiness, I feel indignant at the idea of degraded sovereignty. I should feel the same interest for any State, large or small, whether it were the little State of Delaware herself, or the still more insignificant Republic of St. Marino.

Mr. STONE, of North Carolina.—The importance of the present question might, I presume, justify any member in delivering his sentiments without apology. But from the able manner in which the subject has already been discussed, I should have been induced to adhere to my usual course since I have been a member of this body,

and, leaving its elucidation to others of greater experience and more talents, have been contented with a silent vote. As, however, the State whose servant I am, and whose faithful servant I wish at all times to be found, has instructed her members on this subject, I will endeavor, in the plain way of which alone I am capable, to assign the reasons for my vote. And, in doing this, I rather wish than hope that I may state anything worthy the consideration of this enlightened assembly.

The argument upon this question has naturally divided into two parts, the one of expediency—the other of constitutionality. If the repeal of this law shall be deemed expedient, the Senate will doubtless consider it their duty to repeal it if no Constitutional objection opposes it; but if it shall be deemed unconstitutional to repeal it, then no considerations of expediency can stand in the way of that solemn instrument we are all sworn to support.

Before entering into an examination of the expediency of the repeal, it may be proper to remark, that gentlemen who have spoken against the repeal, whose talents and eloquence I highly admire, have not correctly stated the question. The true question is, not whether we shall deprive the people of the United States of all their courts of justice, but whether we shall restore to them their former courts. Shall we, or shall we not, continue an experiment made, or attempted to be made, I will not say improperly, because my respect for this body and for my country, forbid the imputation; but I will say that the length of time we remained without this system, and the repeated ineffectual attempts made to establish it, presents strong reasons for inferring that there are not those great apparent reasons in favor of it that have been stated. A system somewhat similar to the present had been rejected by the Legislature because they preferred the former system. Another evidence to the same purport is, that during the last session, when the subject was again revived, and the present plan adopted, an amendment was offered, to amend by extending and enlarging the former establishment.

[Here Mr. S. read the amendment proposed, which augmented the number of judges of the Supreme Court, and assigned their circuits.]

This amendment was rejected, and from the vote entered on the Journal of that day, it appears that the difference of votes against the amendment was formed of those gentlemen who were nominated to appointments made vacant by the promotions under the new law. I do not state this circumstance as an evidence that these gentlemen were influenced by improper motives; but to show that the manner in which the new system was formed was not calculated to establish, in the public mind, a decided preference of it over the old system. Having made these remarks on the great deliberation said to have been manifested in the adoption of this plan, I hope I may be permitted to express my perfect coincidence with the gentleman from Connecticut, that courts are necessary for the administration of justice, and that, without them, our laws would be a dead letter.

But it appears to me essential to the due administration of justice, that those who preside in our courts should be well acquainted with the laws which are to guide their decisions. And, I apprehend, that no way is so much calculated to impart this knowledge, as a practical acquaintance with them, by attending courts in the several States, and hearing gentlemen who are particularly acquainted with them, explain and discuss them. It is, therefore, absolutely necessary, in my mind, that the judges of the Supreme Court, whose power controls all the other tribunals, and on whose decisions rest the property, the reputation, the liberty, and the lives of our citizens, should, by riding the circuit, render themselves practically acquainted with their duties. It is well known, that the knowledge of the laws of a State is not to be suddenly acquired, and it is reasonable to conclude, that that knowledge is most correctly possessed by men whose whole lives have been devoted to the acquisition. It is also perfectly well known, that the knowledge of the modes and principles of practice in the different States, or of any State, is most effectually to be acquired in courts, where gentlemen of skill and experience apply those principles to use upon existing points.

This defect, then, of the present plan, is, in my opinion, so radical, that, of itself, it would decide, with me, the question of expediency.

With regard to the expense of this new system, I will say, that it weighs as much as it is worth. The single consideration of an expenditure of thirty thousand dollars may not be deemed of much importance, when weighed with the benefits derived from an administration of justice over this extensive country. If this great object can be better effected with the additional expense, then it is proper to consider whether the amelioration is worth the price; but, if it is not better effected, it surely cannot be the wish of any gentleman to incur a useless expense. If, when this law passed, the business, to the transaction of which the old courts were fully competent, was lessening, then surely there was no occasion for additional tribunals.

The more important consideration involves the Constitutional question: Can we, according to that sacred instrument, repeal this law, and destroy the offices created by it? If we cannot, I hope the Senate will reject the proposition on your table. But if we can, as on examination I think we may, I trust the resolution will be adopted.

The gentleman from Kentucky, who introduced this subject, has so fully and forcibly stated that part of the argument which establishes that the office of judge, being declared by the Constitution to be during good behaviour, must evidently apply to existing offices, not to contest the power of the Legislature in doing away offices, that I shall not touch it.

I have taken a view of the Constitution, which, though new in this argument, appears to me to be correct and conclusive. The fourth section of the second article of that Constitution declares,

‘that “the President, the Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.”’

This section being added to the article establishing the Executive power, evidently operates as a restraint or curb to that power, to prevent the President, Vice President, or any officer in the appointment of the President, from remaining in office, when, in the opinion of the Legislature, the public good requires them to be displaced. The practical construction put upon this article, in connexion with other parts of the Constitution, is, that all officers in the appointment of the President may be removed at his will; but that those officers, together with himself and Vice President, shall be removed upon impeachment and conviction, by the Legislature. No part of the Constitution expressly gives the power of removal to the President; but a construction has been adopted and practised upon from necessity, giving him that power in all cases in which he is not expressly restrained from the exercise of it. The judges afford an instance in which he is expressly restrained from removal; it being declared, by the first section of the third article of the Constitution, that the judges both of the supreme and inferior courts shall hold their offices during good behaviour. They doubtless shall, (as against the President’s power to retain them in office,) in common with other offices of his appointment, be removed from office by impeachment and conviction; but it does not follow that they might not be removed by other means. They shall hold their offices during good behaviour, and they shall be removed from office upon impeachment and conviction of treason, bribery, and other high crimes and misdemeanors. If the words, impeachment of high crimes and misdemeanors, be understood according to any construction of them hitherto received and established, it will be found, that although a judge, guilty of high crimes and misdemeanors, is always guilty of misbehaviour in office, yet that of the various species of misbehaviour in office, which may render it exceedingly improper that a judge should continue in office, many of them are neither treason, nor bribery, nor can they be properly dignified by the appellation of high crimes and misdemeanors; and for the impeachment of which no precedent can be found; nor would the words of the Constitution justify such impeachment.

To what source, then, shall we resort for a knowledge of what constitutes this thing, called misbehaviour in office? The Constitution, surely, did not intend that a circumstance so important as the tenure by which the judges hold their offices, should be incapable of being ascertained. Their misbehaviour certainly is not an impeachable offence; still it is the ground upon which the judges are to be removed from office. The process of impeachment, therefore, cannot be the only one by which the judges may be removed from office, under, and according to the Constitution. I take it, therefore, to be a thing undeniable, that

JANUARY, 1802.

Judiciary System.

SENATE.

there resides somewhere in the Government a power to declare what shall amount to misbehaviour in office, by the judges, and to remove them from office for the same, without impeachment. The Constitution does not prohibit their removal by the Legislature, who have the power to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States. But, says the gentleman from New York, the judges are officers instituted by the Constitution, to save the people from their greatest enemies, themselves; and therefore, they should be entirely independent of, and beyond the control of the Legislature. If such was the design of the wise men who framed and adopted the Constitution, can it be presumed they would have provided so ineffectual a barrier as these judges can readily be shown to be? It is allowed, on all hands, the Legislature may modify the courts: they may add judges, they may fix the times at which the courts shall sit, &c. Suppose the Legislature to have interests distinct from the people, and the judges to stand in the way of executing any favorite measure—Can anything be more easy than for the Legislature to declare that the courts, instead of being held semi-annually, or oftener, shall be held only once in six, eight, ten, or twenty years? Or, in order to free themselves from the opposition of the present Supreme Court, to declare, that court shall hereafter be held by thirteen judges. An understanding between the President and the Senate would make it practicable to fill the new offices with men of different views and opinions from those now in office. And what, in either case, would become of this boasted protection of the people against themselves? I cannot conceive the Constitution intended so feeble a barrier; a barrier so easily evaded.

What danger is there to the people from the Legislature which the courts can control? The means of oppression nearest at hand to the Legislature, and which afford the strongest temptation to their use, are, the raising extravagant and unnecessary sums of money, and the embodying large and useless armies. Can the courts oppose effectual checks to these powers? I presume not. The Constitution permits their exercise to any extent within the discretion of the Legislature.

The objects of courts of law, as I understand them, are, to settle questions of right between suitors; to enforce obedience to the laws, and to protect the citizens against the oppressive use of power in the Executive offices. Not to protect them against the Legislature, for that I think I have shown to be impossible, with the powers which the Legislature may safely use and exercise; and because the people have retained, in their own hands, the power of controlling and directing the Legislature, by their immediate and mediate elections of President, Senate, and House of Representatives.

It is not alone the sixteen rank and file, which the gentleman from New York has so ludicrously depicted, that I apprehend immediate danger from, but it is the principle which converts the office of

judge into an hospital of incurables, and declares, that an expiring faction, after having lost the public confidence, may add to those sixteen, until they become sixteen hundred or sixteen thousand; and that the restored good sense of the Legislature, the whole Government and Constitution, retains no means of casting them off, but by destroying itself, and resorting to revolutionary principles. The Legislature may repeal unnecessary taxes, may disband useless and expensive armies, may declare they will no longer be bound by the stipulations of an oppressive treaty; and if war should follow, the Constitution is still safe. But if the construction which gentlemen contend for, be correct, a band of drones, to any amount in number, under the denomination of judges, may prey upon the substance of the people, and the Government retains not the power to remove them but by destroying the Constitution itself.

I beseech this enlightened assembly to pause before they adopt a construction capable of producing so great a mischief, and so ineffectual to the ends proposed.

The question is not now, as it would seem from the arguments of gentlemen, they understood it to be, whether we shall abolish offices without compensating the officers for the sacrifices they may have made. If a proposal to compensate them shall be brought forward, the Legislature will surely do what honor and justice shall require.

If I possessed equal powers of speech with the gentleman from Connecticut, I might be tempted to make as impressive an address to the feelings of the Senate. Sure I am I feel as deep an interest in, and solicitude for, the Constitution as that gentleman. I view it, with him, as the bond of our Union, and the foundation of our safety. But it must be supported on reasonable and practical grounds. My understanding is incapable of seeing how the absurdities and evils of the construction contended for can be avoided. I hope, therefore, that the power of the Legislature to put down as well as to build up courts of justice, as the public good may require, will be established.

Not having accustomed myself to deliver my sentiments in this or the other branch of the Legislature, I may not have comprised them in so short a compass, nor in such orderly shape, as would be proper in submitting them to this enlightened assembly. If, however, I have succeeded in stating intelligibly the grounds of my conviction, I am satisfied. If my remarks have contributed to elucidate the subject to others, I shall rejoice; but if, failing in this, they also are mixed with error, I trust gentlemen will set them right.

THURSDAY, January 14.

The Senate took into consideration the resolution of the House of Representatives of the 21st of December last, authorizing the Secretary of State to furnish the members of both Houses with a copy of the laws of the sixth Congress, and concurred therein.

A message from the House of Representatives

informed the Senate that the House agree to some and disagree to other amendments of the Senate, to the bill concerning the library for the use of both Houses of Congress. They have passed a bill authorizing the discharge of John Hobby from his confinement; in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the courts of the United States," ought to be repealed.

Mr. OLCOTT, of New Hampshire, said this subject was of the most important kind, and though many able arguments had been already offered, he could not pass it over with a silent vote.

It has been suggested that the act now proposed to be repealed, came in on the influx of passion, and that the influx of reason should sweep it away. He did not know that this was the case. Some gentlemen contend that it was adopted with great deliberation.

He thought the reasons for a repeal of this law insufficient. It is not said, that if the Constitution vests a right to office in the judges, that we can affect them. He thought the Constitution did vest the right, and he held it to be sacred.

The provisions of the Constitution appeared to him so plain, that they scarcely admitted of illustration. He who undertakes to explain the text, must find more explicit terms than those contained in it. He could not find any.

After dwelling upon the different provisions of the Constitution, Mr. O. went upon the question of expediency, at some length, and concluded that a repeal was as inexpedient as unconstitutional.

Mr. COCKE, of Tennessee, followed Mr. OLCOTT. He said he was sorry gentlemen attempted to make quack doctors of them, by saying we may give a wound but cannot heal it. He wished the Senate to inquire whether the law now proposed to be repealed was Constitutional or not. If it was not, we should act like honest men, acknowledge that we have violated the Constitution, and restore it to its purity by repealing the law. Let us recur to the journals of 1799, and see what was the understanding of these champions of our liberties, and whether they have not since changed. The journals would prove that the judges were to mix with the Legislature, were to be locked up in a closet, and to declare who was to be our Executive Magistrate.

[Mr. COCKE here went into an examination of the arguments on the Constitutional point.]

We have been told that the nation is to look up to these immaculate judges to protect their liberties; to protect the people against themselves. This was novel, and what result did it lead to? He shuddered to think of it. Were there none of these judges ready to plunge their swords in the American heart? He did not think it proper to

be alarmed by the terrors held out. He wished to know no man; to take things as they are. But if gentleman will attack, they must expect a reply.

Mr. COCKE then dilated upon the several points of the discussion, and concluded with the expression of the hope that the Legislature would repeal the law, and that they would not give way to the ideas of gentlemen, that the Government was made for a chosen few, for the judges, to whom we are to look up for every thing.

Mr. MORRIS.—Mr. President, I had fostered the hope that some gentleman, who thinks with me, would have taken upon himself the task of replying to the observations made yesterday and this morning, in favor of the motion on your table.—But since no gentleman has gone so fully into the subject as it seems to require, I am compelled to request your attention.

We were told yesterday, by the honorable member from Virginia, that our objections were calculated for the bystanders, and made with a view to produce effect upon the people at large. I know not for whom this charge is intended. I certainly recollect no such observations. As I was personally charged with making a play upon words, it may have been intended for me. But surely, sir, it will be recollected that I declined that paltry game, and declared that I considered the verbal criticism which had been relied on, as irrelevant. If I can recollect what I said, from recollecting well what I thought, and meant to say, sure I am that I uttered nothing in the style of an *appeal to the people*. I hope no member of this House has so poor a sense of its dignity as to make such an appeal. As to myself, it is now near thirty years since I was called into public office; during that period I have frequently been the servant of the people, always their friend; but at no one moment of my life their flatterer, and God forbid that I ever should be. When the honorable gentleman considers the course we have taken, he must see that the observation he has thus pointed, can light on no object. I trust that it did not flow from the consciousness of his own intentions. He, I hope, had no view of this sort. If he had, he was much, very much mistaken. Had he looked round upon those who honor us with their attendance he would have seen that the splendid flashes of his wit excited no approbatory smile. The countenances of those by whom we were surrounded, presented a different spectacle. They were impressed with the dignity of this House; they perceived in it the dignity of the American people, and felt, with high and manly sentiment, their own participation.

We have been told, sir, by the honorable gentleman from Virginia, that there is no independent part of this Government. That in popular Governments the force of every department, as well as the Government itself, must depend upon popular opinion. And the honorable member from North Carolina has informed us that there is no check for the overbearing powers of the Legislature but public opinion; and he has been pleased to notice a sentiment I had uttered—a sentiment which not only fell from my lips, but which flow-

JANUARY, 1802.

Judiciary System.

SENATE.

ed from my heart. It has, however, been misunderstood and misapplied. After reminding the House of the dangers to which popular governments are exposed, from the influence of designing demagogues upon popular passion, I took the liberty to say, that *we*, we the Senate of the United States, are assembled here to save the people from their most *dangerous* enemy, to save them from themselves; to guard them against the baneful effects of their own precipitation, their passion, their misguided zeal. 'Tis for these purposes that all our Constitutional checks are devised. If this be not the language of the Constitution, the Constitution is all nonsense. For why are the Senators chosen by communities, and the Representatives directly by the people? Why are the one chosen for a longer term than the other? Why give one branch of the Legislature a negative upon the acts of the other? Why give the President a right to arrest the proceedings of both, till two-thirds of each should concur? Why all these multiplied precautions, unless to check and control that impetuous spirit, that headlong torrent of opinion, which has swept away every popular Government that ever existed?

With the most respectful attention, I heard the declaration of the gentleman from Virginia, of his own sentiment. "Whatever," said he, "may be *my opinion* of the Constitution, I hold myself bound to respect it." He disdained, sir, to profess an attachment he did not feel, and I accept his candor as a pledge for the performance of his duty: But he will admit this necessary inference from that frank confession, that although he will struggle (against his inclination) to support the Constitution, even to the last moment; yet, when in spite of all his efforts it shall fall, he will rejoice in its destruction. Far different are my feelings. It is possible that we are both prejudiced, and that, in taking the ground on which we respectively stand, our judgments are influenced by the sentiments which glow in our hearts. I, sir, wish to support this Constitution, because I love it; and I love it, because I consider it as the bond of our union; because in my soul I believe that on it depends our harmony and our peace; that without it we should soon be plunged in all the horrors of civil war; that this country would be deluged with the blood of its inhabitants, and a brother's hand raised against the bosom of a brother.

After these preliminary remarks, I hope I shall be indulged while I consider the subject in reference to the two points which have been taken, the *expediency* and the *constitutionality* of the repeal.

In considering the *expediency*, I hope I shall be pardoned for asking your attention to some parts of the Constitution, which have not yet been dwelt upon, and which tend to elucidate this part of our inquiry. I agree fully with the gentleman, that every section, every sentence, and every word of the Constitution, ought to be deliberately weighed and examined; nay, I am content to go along with him, and give its due value and importance to every stop and comma. In the beginning we find a declaration of the motives which induced the American people to bind themselves by this

compact. And in the fore-ground of that declaration, we find these objects specified, "to form a more perfect union, to establish justice, and to insure domestic tranquillity." But how are these objects effected? The people intended to *establish justice*. What provision have they made to fulfil that intention? After pointing out the courts which should be established, the second section of the third article informs us:

"The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

"In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Thus then we find that the judicial power shall extend to a great variety of cases, but that the Supreme Court shall have only appellate jurisdiction in all admiralty and maritime causes, in all controversies between the United States and private citizens, between citizens of different States, between citizens of the same State claiming lands under different States, and between a citizen of the United States and foreign States, citizens, or subjects. The honorable gentleman from Kentucky, who made the motion on your table, has told us that the Constitution, in its judiciary provisions, contemplated only those cases which could not be tried in the State courts. But he will, I hope, pardon me when I contend that the Constitution did not merely contemplate, but did, by express words, reserve to the national tribunals a right to decide, and did secure to the citizens of America a right to demand their decision, in many cases evidently cognizable in the State courts. And what are these cases? They are those in respect to which it is by the Constitution presumed that the State courts would not always make a cool and calm investigation, a fair and just decision. To form, therefore, a more perfect union, and to insure domestic tranquillity, the Constitution has said there shall be courts of the Union to try causes, by the wrongful decision of which the Union might be endangered or domestic tranquillity be disturbed. And what courts? Look again at the cases designated. The Supreme Court has no original jurisdiction. The Constitution has said that the judicial powers shall be vested in the supreme and inferior courts. It has declared that the judicial power so vested shall extend to the cases mentioned, and that the Supreme Court shall not have original jurisdiction in those cases. Evidently, therefore, it has declared that they shall

(in the first instance) be tried by inferior courts, with appeal to the Supreme Court. This, therefore, amounts to a declaration, that the inferior courts shall exist. Since, without them, the citizen is deprived of those rights for which he stipulated, or rather those rights verbally granted would be actually withheld; and that great security of our Union, that necessary guard of our tranquility, be completely paralyzed, if not destroyed. In declaring then that these tribunals shall exist, it equally declares that the Congress shall ordain and establish them. I say they shall; this is the evident intention, if not the express words, of the Constitution. The Convention in framing, the American people in adopting, that compact, did not, could not presume, that the Congress would omit to do what they were thus bound to do. They could not presume, that the Legislature would hesitate one moment, in establishing the organs necessary to carry into effect those wholesome, those important provisions.

The honorable member from Virginia has given us a history of the judicial system, and in the course of it has told us, that the judges of the Supreme Court knew, when they accepted their offices, the duties they had to perform, and the salaries they were to receive. He thence infers, that if again called on to do the same duties, they have no right to complain. Agreed: But that is not the question between us. Admitting that they have made a hard bargain, and that we may hold them to a strict performance, is it wise to exact their compliance to the injury of our constituents? We are urged to go back to the old system; but let us first examine the effects of that system. The judges of the Supreme Court rode the circuits, and two of them, with the assistance of a district judge, held circuit courts and tried causes. As a Supreme Court they have in most cases only appellate jurisdiction. In the first instance, therefore, they tried a cause, sitting as an inferior court, and then on appeal tried it over again, as a Supreme Court. Thus then the appeal was from the sentence of the judges to the judges themselves. But say, that to avoid this impropriety, you will incapacitate the two judges who sat on the circuit from sitting in the Supreme Court to review their own decrees. Strike them off; and suppose either the same or a contrary decision to have been made on another circuit, by two of their brethren, in a similar case: For the same reason you strike them off, and then you have no court left. Is this wise? Is it safe? You place yourselves in the situation where your citizens must be deprived of the advantage given to them of a court of appeals, or else run the greatest risk that the decision of the first court will carry with it that of the other.

The same honorable member has given us a history of the law passed the last session, which he wishes now to repeal. That history is accurate, at least in one important part of it. I believe that all amendments were rejected, pertinaciously rejected; and I acknowledge that I joined heartily in that rejection. It was for the clearest reason on earth. We all perfectly understood, that to amend the bill was to destroy it; that if ever it got

back to the other House, it would perish. Those, therefore, who approved of the general provisions of that bill, were determined to adopt it. We sought the practicable good, and would not, in pursuit of unattainable perfection, sacrifice that good to the pride of opinion. We took the bill, therefore, with its imperfections, convinced that when it was once passed into a law, it might be easily amended.

We are now told, that this procedure was improper; nay, that it was indecent. That public opinion had declared itself against us. That a majority (holding different opinions) was already chosen to the other House; and that a similar majority was expected from that in which we sit. Mr. President, are we then to understand that opposition to the majority in the two Houses of Congress is improper, is indecent? If so, what are we to think of those gentlemen, who, not only with proper and decent, but with laudable motives, (for such is their claim,) so long, so perseveringly, so pertinaciously opposed that voice of the people, which had so repeatedly, and for so many years, declared itself against them, through the organ of their representatives? Was this indecent in them? If not, how could it be improper for us to seize the only moment which was left for the then majority to do what they deemed a necessary act? Let me again refer to those imperious demands of the Constitution, which called on us to establish inferior courts. Let me remind gentlemen of their assertion on this floor, that centuries might elapse before any judicial system could be established with general consent. And then let me ask, being thus impressed with the sense of the duty and the difficulty of performing that arduous task, was it not wise to seize the auspicious moment?

Among the many stigmas affixed to this law, we have been told that the President, in selecting men to fill the offices which it created, made vacancies and filled them from the floor of this House; and that but for the influence of this circumstance, a majority in favor of it could not have been found. Let us examine this suggestion. It is grounded on a supposition of corrupt influence derived from a hope, founded on two remote and successive contingencies. First, the vacancy might or might not exist; for it depended as well on the acceptance of another as on the President's grant: and secondly, the President might or might not fill it with a member of this House. Yet on this vague conjecture, on this unstable ground, it is inferred that men in high confidence violated their duty. It is hard to determine the influence of self-interest on the heart of man. I shall not, therefore, make the attempt. In the present case, it is possible that the imputation may be just, but I hope not. I believe not. At any rate gentlemen will agree with me, that the calculation is uncertain, and the conjecture vague.

But let it now, for argument sake, be admitted, saving always the reputation of honorable men, who are not here to defend themselves. Let it, I say, for argument sake be admitted, that the gentlemen alluded to acted under the influence of improper motives. What then? Is a law that has

JANUARY, 1802.

Judiciary System.

SENATE.

received the varied assent required by the Constitution, and is clothed with all the needful formalities, thereby invalidated? Can you impair its force by impeaching the motives of any member who voted for it? Does it follow, that a law is bad because all those who concurred in it cannot give good reasons for their votes? Is it not before us? Must we not judge of it by its intrinsic merit? Is it a fair argument, addressed to our understanding, to say, we must repeal a law, even a good one, if the enacting of it may have been effected in any degree by improper motives? Or is the judgment of this House so feeble, that it may not be trusted?

Gentlemen tell us, however, that the law is materially defective, nay, that it is unconstitutional. What follows? Gentlemen bid us repeal it. But is this just reasoning? If the law be only defective, why not amend? And if unconstitutional, why repeal? In this case no repeal can be necessary; the law is in itself void; it is a mere dead letter.

To show that it is unconstitutional, a particular clause is pointed out, and an inference is made, as in the case of goods, where, because there is one contraband article on board, the whole cargo is forfeited. Admit for a moment, that the part alluded to were unconstitutional, this would in no wise affect the remainder. That part would be void, or, if you think proper, you can repeal that part.

Let us, however, examine the clause objected to on the ground of the Constitution. It is said, that by this law the district judges in Tennessee and Kentucky are removed from office by making them circuit judges. And again, that you have by law appointed two new offices, those of circuit judges, and filled them by law, instead of pursuing the mode of appointment prescribed by the Constitution. To prove all this, the gentleman from Virginia did us the favor to read those parts of the law which he condemns, and if I can trust to my memory, it is clear, from what he read, that the laws does not remove these district judges, neither does it appoint them to the office of circuit judges. It does indeed put down the district courts; but is so far from destroying the offices of district judge, that it declares the persons filling those offices shall perform the duty of holding the circuit courts. And so far is it from appointing circuit judges, that it declares the circuit courts shall be held by the district judges. But gentlemen contend, that to discontinue the district courts, was in effect to remove the district judge. This, sir, is so far from being a just inference from the law, that the direct contrary follows as a necessary result; for it is on the principle that these judges continue in office after their courts are discontinued, that the new duty of holding other courts is assigned to them. But gentlemen say, this doctrine militates with the principles we contend for. Surely not. It must be recollected, sir, that we have repeatedly admitted the right of the Legislature to change, alter, modify, and amend the judiciary system, so as best to promote the interests of the people. We only contend, that you shall not exceed or contravene

the authority by which you act. But, say gentlemen, you forced this new office on the district judges, and this is in effect a new appointment. I answer, that the question can only arise on the refusal of those judges to act. But is it unconstitutional to assign new duties to officers already existing? I fear that if this construction be adopted, our labors will speedily end; for we shall be so shackled, that we cannot move. What is the practice? Do we not every day call upon particular officers to perform duties not previously assigned to, or required of them? And must the Executive in every such case make a new appointment?

But as a further reason to restore, by repealing this law, the old system, an honorable member from North Carolina has told us, the judges of the Supreme Court should attend in the States, to acquire a competent knowledge of local institutions, and for this purpose should continue to ride the circuits. I believe there is great use in sending young men to travel; it tends to enlarge their views, and give them more liberal ideas than they might otherwise possess. Nay, if they reside long enough in foreign countries, they may become acquainted with the manners of the people, and acquire some knowledge of their civil institutions. But I am not quite convinced that riding rapidly from one end of this country to the other is the best way to study law. I am inclined to believe that knowledge may be more conveniently acquired in the closet than in the high road. It is moreover to be presumed, that the First Magistrate would, in selecting persons to fill these offices, take the best characters from the different parts of the country, who already possess the needful acquirements. But admitting that the President should not duly exercise, in this respect, his discretionary powers, and admitting that the ideas of the gentleman are correct, how wretched must be our condition! These, our judges, when called on to exercise their functions, would but begin to learn their trade, and that too at a period of life when the intellectual powers with no great facility can acquire new ideas. We must, therefore, have a double set of judges. One set of apprentice-judges to ride circuits and learn; the other set of master-judges, to hold courts and decide controversies.

We are told, sir, that the repeal asked for is important, in that it may establish a precedent, for that it is not merely a question on the propriety of disbanding a corps of sixteen rank and file; but that provision may hereafter be made, not for sixteen, but for sixteen hundred or sixteen thousand judges, and that it may become necessary to turn them to the right about. Mr. President, I will not, I cannot presume, that any such provision will ever be made, and therefore I cannot conceive any such necessity; I will not suppose, for I cannot suppose, that any party or faction will ever do anything so wild, so extravagant. But I will ask, how does this strange supposition consist with the doctrine of gentlemen, that public opinion is a sufficient check on the Legislature, and a sufficient safeguard to the people? Put the case to its consequences, and what becomes of the check? Will gentlemen say it is to be found in the force of this

wise precedent? Is this to control succeeding rulers in their wild, their mad career? But how? Is the creation of judicial officers the only thing committed to their discretion? Have they not, according to the doctrine contended for, our all at their disposition, with no other check than public opinion, which, according to the supposition, will not prevent them from committing the greatest follies and absurdities? Take then all the gentleman's ideas, and compare them together, it will result that here is an inestimable treasure put into the hands of drunkards, madmen, and fools.

But away with all these derogatory suppositions. The Legislature may be trusted. Our Government is a system of salutary checks: one Legislative branch is a check on the other. And should the violence of party spirit bear both of them away, the President, an officer high in honor, high in the public confidence, charged with weighty concerns, responsible to his own reputation, and to the world, stands ready to arrest their too impetuous course. This is our system. It makes no mad appeal to every mob in the country. It appeals to the sober sense of men selected from their fellow-citizens for their talents, for their virtue; of men advanced in life, and of matured judgment. It appeals to their understanding, to their integrity, to their honor, to their love of fame, to their sense of shame. If all these checks should prove insufficient, and alas! such is the condition of human nature, that I fear they will not always be sufficient, the Constitution has given us one more: it has given us an independent judiciary. We have been told, that the Executive authority carries your laws into execution. But let us not be the dupes of sound. The Executive Magistrate commands indeed your fleets and armies; and duties, imposts, excises, and other taxes are collected, and all expenditures are made by officers whom he has appointed. So far indeed he executes your laws. But these, his acts, apply not often to individual concerns. In those cases, so important to the peace and happiness of society, the execution of your laws is confided to your judges; and therefore are they rendered independent. Before then that you violate that independence, pause. There are State sovereignties, as well as the sovereignty of the General Government. There are cases, too many cases, in which the interest of one is not considered as the interest of the other. Should these conflict, if the judiciary be gone, the question is no longer of law, but of force. This is a state of things which no honest and wise man can view without horror.

Suppose, in the omnipotence of your Legislative authority, you trench upon the rights of your fellow citizens, by passing an unconstitutional law. If the judiciary department preserve its vigor, it will stop you short. Instead of a resort to arms, there will be a happier appeal to argument. Suppose a case still more impressive. The President is at the head of your armies. Let one of his generals, flushed with victory, and proud in command, presume to trample on the rights of your most insignificant citizen: indignant of the wrong, he will demand the protection of your tribunals, and,

safe in the shadow of their wings, will laugh his oppressor to scorn.

Having now, I believe, examined all the arguments adduced to show the expediency of this motion, and which, fairly sifted, reduce themselves at last to these two things: restore the ancient system, and save the additional expense—before I close what I have to say on this ground, I hope I shall be pardoned for saying one or two words about the expense. I hope, also, that, notwithstanding the epithets which may be applied to my arithmetic, I shall be pardoned for using that which I learned at school. It may have deceived me when it taught me that two and two make four. But though it should now be branded with opprobrious terms, I must *still* believe that two and two do *still* make four. Gentlemen of newer theories, and of higher attainments, while they smile at my inferiority, must bear with my infirmities, and take me as I am.

In all this great system of saving; in all this ostentatious economy, this rage for reform, how happens it that the eagle eye has not yet been turned to the Mint? That no one piercing glance has been able to behold the expenditures of that department? I am far from wishing to overturn it. Though it be not of great necessity, nor even of substantial importance; though it be but a splendid trapping of your Government; yet, as it may, by impressing on your current coin the emblems of your sovereignty, have some tendency to encourage a national spirit, and to foster the national pride, I am willing to contribute my share for its support. Yes, sir, I would foster the national pride. I cannot indeed approve of national vanity, nor feed it with vile adulation. But I would gladly cherish the lofty sentiments of national pride. I would wish my countrymen to feel like Romans, to be as proud as Englishmen; and, going still farther, I would wish them to veil their pride in the well bred modesty of French politeness. But can this establishment, the mere decoration of your political edifice, can it be compared with the massy columns on which you rest your peace and safety? Shall the striking of a few half-pence be put into a parallel with the distribution of justice? I find, sir, from the estimates on your table, that the salaries of the officers of the Mint amount to \$10,600, and that the expenses are estimated at 10,900; making \$21,500.

I find that the actual expenditures of the last year, exclusive of salaries, amounted to \$25,154 44; add the salaries, \$10,600, and we have a total of \$35,754 44. A sum which exceeds the salaries of these sixteen judges.

I find further, that during the last year they have coined cents and half cents to the amount of 10,473 dollars and 29 cents. Thus their copper coinage falls a little short of what it costs us for their salaries. We have, however, from this establishment, about a million of cents—one to each family in America—a little emblematical medal, to be hung over their chimney pieces. And this is all their compensation for all that expense. Yet not a word has been said about the Mint; while the judges, whose services are so much greater,

JANUARY, 1802.

Judiciary System.

SENATE.

and of so much more importance to the community, are to be struck off at a blow, in order to save an expense which, compared with the object, is pitiful. What conclusion then are we to draw from this predilection?

I will not pretend to assign to gentlemen the motives by which they may be influenced; but if I should permit myself to make the inquiry, the style of many observations, and more especially the manner, the warmth, the irritability, which have been exhibited on this occasion, would lead to a solution of the problem. I had the honor, sir, when I addressed you the other day to observe, that I believed the universe could not afford a spectacle more sublime than the view of a powerful State kneeling at the altar of justice and sacrificing there her passion and her pride; that I once fostered the hope of beholding that spectacle of magnanimity in America. And now what a world of figures has the gentleman from Virginia formed on his misapprehension of that remark. I never expressed anything like exultation at the idea of a State ignominiously dragged in triumph at the heels of your judges. But permit me to say, the gentleman's exquisite sensibility on that subject, his alarm and apprehension, all show his strong attachment to State authority. Far be it from me, however, to charge the gentleman with improper motives. I know that his emotions arise from one of those imperfections in our nature, which we cannot remedy. They are excited by causes which have naturally made him hostile to this Constitution, though his duty compels him reluctantly to support it. I hope, however, that those gentlemen who entertain different sentiments, and who are less irritable on the score of State dignity, will think it essential to preserve a Constitution, without which the independent existence of the States themselves will be but of short duration.

This, sir, leads me to the second object I had proposed. I shall therefore pray your indulgence, while I consider how far this measure is *Constitutional*. I have not been able to discover the expediency, but will now, for argument's sake, admit it; and here, I cannot but express my deep regret for the situation of an honorable member from North Carolina. Tied fast, as he is, by his instructions, arguments, however forcible, can never be effectual. I ought, therefore, to wish, for his sake, that his mind may not be convinced by anything I shall say; for hard indeed would be his condition, to be bound by the contrariant obligations of an order and an oath. I cannot, however, but express my profound respect for the talents of those who gave him his instructions, and who, sitting at a distance, without hearing the arguments, could better understand the subject than their Senator on this floor, after full discussion.

The honorable member from Virginia has repeated the distinction before taken between the supreme and the inferior tribunals; he has insisted on the distinction between the words *shall* and *may*; has inferred from that distinction, that the judges of the inferior courts are subjects of Legislative discretion; and has contended that the

word *may* includes all power respecting the subject to which it is applied, consequently to raise up and to put down, to create and to destroy. I must entreat your patience, sir, while I go more into this subject than I ever supposed would be necessary. By the article so often quoted, it is declared, "that the judicial power of the United States *shall* be vested in one Supreme Court, and in such inferior courts as the Congress *may* from time to time establish." I beg leave to call your attention to what I have already said of these inferior courts. That the original jurisdiction of various subjects being given exclusively to them, it became the bounden duty of Congress to establish such courts. I will not repeat the argument already used on that subject. But I will ask those who urge the distinction between the Supreme Court and the inferior tribunals, whether a law was not previously necessary before the Supreme Court could be organized. They reply, that the Constitution says, there *shall* be a Supreme Court, and therefore the Congress are commanded to organize it, while the rest is left to their discretion. This, sir, is not the fact. The Constitution says, the judicial power shall be vested in one Supreme Court, and in inferior courts. The Legislature can therefore only organize one Supreme Court, but they may establish as many inferior courts as they shall think proper. The designation made of them by the Constitution is, such inferior courts as the Congress may from time to time ordain and establish. But why, say gentlemen, fix precisely one Supreme Court, and leave the rest to Legislative discretion? The answer is simple: It results from the nature of things from the existent and probable state of our country. There was no difficulty in deciding that one and only one Supreme Court would be proper or necessary, to which should lie appeals from inferior tribunals. Not so as to these. The United States were advancing in rapid progression. Their population of three millions was soon to become five, then ten, afterwards twenty millions. This was well known, as far as the future can become an object of human comprehension. In this increase of numbers, with a still greater increase of wealth, with the extension of our commerce and the progress of the arts, it was evident that although a great many tribunals would become necessary, it was impossible to determine either on the precise number or the most convenient form. The Convention did not pretend to this prescience; but had they possessed it, would it have been proper to have established, then, all the tribunals necessary for all future times? Would it have been wise to have planted courts among the Chickasaws, the Choctaws, the Cherokees, the Tuscaroras, and God knows how many more, because at some future day the regions over which they roam might be cultivated by polished men? Was it not proper, wise, and necessary, to leave in the discretion of Congress the number and the kind of courts which they might find it proper to establish for the purpose designated by the Constitution? This simple statement of facts—facts of public notoriety—is alone a sufficient comment

on, and explanation of, the word on which gentlemen have so much relied. The Convention in framing, the people in adopting, this compact, say the judicial power shall extend to many cases, the original cognizance whereof shall be by the inferior courts; but it is neither necessary, nor even possible, now to determine their number or their form; that essential power, therefore, shall vest in such inferior courts as the Congress may from time to time, in the progression of time, and according to the indication of circumstances, establish; not provide, or determine, but establish. Not a mere temporary provision, but an establishment. If, after this, it had said in general terms, that judges should hold their offices during good behaviour, could a doubt have existed on the interpretation of this act, under all its attending circumstances, that the judges of the inferior courts were intended as well as those of the Supreme Court? But did the framers of the Constitution stop here? Is there then nothing more? Did they risk on these grammatical niceties the fate of America? Did they rest here the most important branch of our Government? Little important, indeed, as to foreign danger; but infinitely valuable to our domestic peace, and to personal protection against the oppression of our rulers. No; lest a doubt should be raised, they have carefully connected the judges of both courts in the same sentence; they have said, "the judges both of the supreme and inferior courts" thus coupling them inseparably together. You may cut the bands, but you can never untie them. With salutary caution they devised this clause to arrest the overbearing temper which they knew belonged to Legislative bodies. They do not say the judges, simply, but the judges of the supreme and inferior courts shall hold their offices during good behaviour. They say, therefore, to the Legislature, you may judge of the propriety, the utility, the necessity, of organizing these courts; but when established, you have done your duty. Anticipating the course of passion in future times, they say to the Legislature, you shall not disgrace yourselves by exhibiting the indecent spectacle of judges established by one Legislature removed by another. We will save you also from yourselves. We say these judges shall hold their offices; and surely, sir, to pretend that they can hold their office after the office is destroyed, is contemptible.

The framers of this Constitution had seen much, read much, and deeply reflected. They knew by experience the violence of popular bodies, and let it be remembered, that since that day many of the States, taught by experience, have found it necessary to change their forms of government to avoid the effects of that violence. The Convention contemplated the very act you now attempt. They knew also the jealousy and the power of the States; and they established for you and for their protection this most important department. I beg gentlemen to hear and remember what I say: It is this department alone, and it is the independence of this department, which can save you from civil war. Yes, sir, adopt the language of gentlemen, say with them, by the act to which you are urged,

"if we cannot remove the judges we can destroy them." Establish thus the dependence of the judiciary department, who will resort to them for protection against you? Who will confide in, who will be bound by, their decrees? Are we then to resort to the ultimate reason of Kings! Are our arguments to fly from the mouths of our cannon!

We are told that we may violate our Constitution, because similar constitutions have been violated elsewhere. Two States have been cited to that effect, Maryland and Virginia. The honorable gentleman from Virginia tells us that when this happened in the State he belongs to, no complaint was made by the judges. I will not inquire into that fact, although I have the protest of the judges now lying before me; judges eminent for their talents, renowned for their learning, respectable for their virtue. I will not inquire what Constitutions have been violated. I will not ask either when or where this dangerous practice began, or has been followed; I will admit the fact. What does it prove? Does it prove that because they have violated, we also may violate? Does it not prove directly the contrary? Is it not the strongest reason on earth for preserving the independence of our tribunals? If it be true that they have, with strong hand, seized their courts, and bent them to their will, ought we not to give suitors a fair chance for justice in our courts, or must the suffering citizen be deprived of all protection?

The gentleman from Virginia has called our attention to certain cases which he considers as forming necessary exceptions to the principles for which we contend. Permit me to say, that necessity is a hard law, and frequently proves too much; and let the gentleman recollect, that arguments which prove too much, prove nothing.

He has instanced a case where it may be proper to appoint commissioners for a limited time to settle some particular description of controversies. Undoubtedly it is always in the power of Congress to form a board of commissioners for particular purposes. He asks, are these inferior courts, and must they also exist forever? I answer, that the nature of their offices must depend on the law by which they are created; if called to exercise the judicial functions designated by the Constitution, they must have an existence conformable to its injunctions.

Again, he has instanced the Mississippi Territory claimed by, and which may be surrendered to, the State of Georgia, and a part of the Union which may be conquered by a foreign enemy. And he asks triumphantly, are our inferior courts to remain after our jurisdiction is gone? This case rests upon a principle so simple that I am surprised the honorable member did not perceive the answer in the very moment when he made the objection. Is it by our act that a country is taken from us by a foreign enemy? Is it by our consent that our jurisdiction is lost? I had the honor, in speaking the other day, expressly, and for the most obvious reasons, to except the case of conquest. As well might we contend for the government of a town swallowed up by an earthquake.

JANUARY, 1802.

Judiciary System.

SENATE.

Mr. MASON explained.—He had supposed the case of territory conquered, and afterwards ceded to the conqueror, or some other territory ceded in lieu of it.

Mr. MORRIS.—The case is precisely the same; until after the peace the conquest is not complete. Everybody knows that until the cession by treaty, the original owner has the postliminary right to a territory taken from him. Beyond all question, where Congress are compelled to cede the territory, the judges can no longer exist unless the new sovereign confer the office. Over such territory the authority of the Constitution ceases, and of course the rights which it confers.

It is said, the judicial institution is intended for the benefit of the people, and not of the judge; and it is complained of, that in speaking of the office, we say it is *his* office. Undoubtedly the institution is for the benefit of the people. But the question remains, how will it be rendered most beneficial? Is it by making the judge independent, by making it *his* office, or is it by placing him in a state of abject dependence, so that the office shall be his to-day and belong to another to-morrow? Let the gentleman hear the words of the Constitution: It speaks of *their* offices; consequently, as applied to a single judge, of *his* office, to be exercised by him for the benefit of the people of America, to which exercise his independence is as necessary as his office.

The gentleman from Virginia has, on this occasion, likened the judge to a bridge, and to various other objects; but I hope for his pardon, if, while I admire the lofty flights of his eloquence, I abstain from noticing observations which I conceive to be utterly irrelevant.

The same honorable member has not only given us his history of the Supreme Court, but has told us of the manner in which they do business, and expressed his fears that, having little else to do, they would do mischief. We are not competent, sir, to examine, nor ought we to prejudge, their conduct. I am persuaded they will do their duty, and presume they will have the decency to believe that we do our duty. In so far as they may be busied with the great mischief of checking the Legislative or Executive departments in any wanton invasion of our rights, I shall rejoice in that mischief. I hope, indeed, they will not be so busied, because I hope we shall give them no cause. But I also hope they will keep an eagle eye upon us lest we should. It was partly for this purpose they were established, and, I trust, that when properly called on, they will dare to act. I know this doctrine is unpleasant; I know it is more popular to appeal to public opinion—that equivocal, transient being, which exists nowhere and everywhere. But if ever the occasion calls for it, I trust the Supreme Court will not neglect doing the great mischief of saving this Constitution, which can be done much better by their deliberations, than by resorting to what are called revolutionary measures.

The honorable member from North Carolina, sore pressed by the delicate situation in which he is placed, thinks he has discovered a new argu-

ment in favor of the vote which he is instructed to give. As far as I can enter into his ideas, and trace their progress, he seems to have assumed the position which was to be proved, and then search through the Constitution, not to discover whether the Legislature have the right contended for, but whether, admitting them to possess it, there may not be something which might not comport with that idea. I shall state the honorable member's argument as I understand it, and if mistaken, pray to be corrected. He read to us that clause which relates to impeachment, and comparing it with that which fixes the tenure of judicial office, has observed that this clause must relate solely to a removal by the Executive power, whose right to remove, though not, indeed, anywhere mentioned in the Constitution, has been admitted in a practice founded on Legislative construction.

That, as the tenure of the office is during good behaviour, and as the clause respecting impeachment does not specify misbehaviour, there is evidently a cause of removal, which cannot be reached by impeachment, and, of course, (the Executive not being permitted to remove,) the right must necessarily devolve on the Legislature. Is this the honorable member's argument? If it be, the reply is very simple. Misbehaviour is not a term known in our law; the idea is expressed by the word misdemeanor; which word is in the clause respecting impeachments. Taking, therefore, the two together, and speaking plain old English, the Constitution says: "The judges shall hold their offices so long as they demean themselves well; but if they shall misbehave, if they shall, on impeachment, be convicted of misdemeanor, they shall be removed." Thus, sir, the honorable member will find that the one clause is just as broad as the other. He will see, therefore, that the Legislature can assume no right from the deficiency of either, and will find that this clause which he relied on, goes, if rightly understood, to the confirmation of our doctrine.

Is there a member of this House, who can lay his hand on his heart, and say that, consistently with the plain words of our Constitution, we have a right to repeal this law? I believe not. And if we undertake to construe this Constitution to our purposes, and say that public opinion is to be our judge, there is an end to all constitutions. To what will not this dangerous doctrine lead? Should it to-day be the popular wish to destroy the First Magistrate, you can destroy him; and should he to-morrow be able to conciliate to him the popular will, and lead them to wish for your destruction, it is easily effected. Adopt this principle, and the whim of the moment will not only be the law, but the Constitution of our country.

The gentleman from Virginia has mentioned a great nation brought to the feet of one of her servants. But why is she in that situation? Is it not because popular opinion was called on to decide everything, until those who wore bayonets decided for all the rest? Our situation is peculiar. At present our national compact can prevent a State from acting hostilely towards the general

interest. But let this compact be destroyed, and each State becomes instantaneously vested with absolute sovereignty. Is there no instance of a similar situation to be found in history? Look at the States of Greece. They were once in a condition not unlike to that in which we should then stand. They treated the recommendations of their Amphictionic Council (which was more a meeting of Ambassadors than a Legislative assembly) as we did the resolutions of the old Congress. Are we wise? So were they. Are we valiant? They also were brave. Have we one common language, and are we united under one head? In this, also, there was a strong resemblance. But, by their divisions, they become at first victims to the ambition of Philip, and were at length swallowed up in the Roman empire. Are we to form an exception to the general principles of nature, and to all the examples of history? And are the maxims of experience to become false, when applied to our fate?

Some, indeed, flatter themselves that our destiny will be like that of Rome. Such, indeed, it might be, if we had the same wise but vile aristocracy, under whose guidance they became the masters of the world. But we have not that strong aristocratic arm, which can seize a wretched citizen, scourged almost to death by a remorseless creditor, turn him into the ranks, and bid him, as a soldier, bear our Eagle in triumph round the globe! I hope to God we shall never have such an abominable institution. But what, I ask, will be the situation of these States (organized as they now are) if, by the dissolution of our national compact, they be left to themselves? What is the probable result? We shall either be the victims of foreign intrigue, and split into factions, fall under the domination of a foreign Power, or else, after the misery and torment of civil war, become the subjects of an usurping military despot. What but this compact—what but this specific part of it, can save us from ruin? The Judicial power, that fortress of the Constitution, is now to be overturned. Yes, with honest Ajax, I would not only throw a shield before it, I would build around it a wall of brass. But I am too weak to defend the rampart against the host of assailants. I must call to my assistance their good sense, their patriotism, and their virtue. Do not, gentlemen, suffer the rage of passion to drive reason from her seat. If this law be indeed bad, let us join to remedy the defects. Has it been passed in a manner which wounded your pride, or aroused your resentment? Have, I conjure you, the magnanimity to pardon that offence. I entreat, I implore you, to sacrifice those angry passions to the interests of our country. Pour out this pride of opinion on the altar of patriotism. Let it be an expiatory libation for the weal of America. Do not, for God's sake, do not suffer that pride to plunge us all into the abyss of ruin. Indeed, indeed, it will be but of little, very little avail, whether one opinion or the other be right or wrong; it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will, which has brought us frail be-

ings into political existence. That opinion is but a changeable thing. It will soon change. This very measure will change it. You will be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the existence of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your charts into the ocean. Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Cast not away this only anchor of our safety. I have seen its progress. I know the difficulties through which it was obtained. I stand in the presence of Almighty God, and of the world; and I declare to you, that if you lose this charter, never, no, never will you get another! We are now, perhaps, arrived at the parting point. Here, even here, we stand on the brink of fate. Pause—pause! For Heaven's sake, pause!

MR. BRECKENRIDGE.—It is high time, Mr. President, that the attention of the Committee should be again called to the real merits of the question under discussion. We have wandered long enough, with the gentleman in the opposition, in those regions of fancy and of terror, to which they have led us. They must indulge us in returning and pursuing our object.

I cannot, however, in justice to my feelings, go into the discussion, without making some remarks on the manner with which the attempts of those who are in favor of this repeal, have been treated. It has been echoed and re-echoed at every sentence, that we are attacking a law, matured by wisdom, and upon which the rights and security of the nation depend. That we are about to demolish the principal pillar in the fabric of our Constitution, and thereby dissolve the Union: and we are politely reminded by the gentleman from Connecticut, that the Roman Government, also once the favorite of the world, sunk under the rude stroke of Gothic hands. Without inquiring what has entitled these honorable gentlemen to assume to themselves the exclusive guardianship of the Constitution; and without inquiring what their attachment to it is; I do pretend, sir, and without paying to myself any compliment, that great as theirs may be, mine is not less. Gentlemen may, therefore, for the future, save themselves the trouble of attempting to arouse my fears on this subject, when I once for all assure them, that my duty as a citizen, and my oath as a Senator, are more operative with me, than the warning voice of any man, or set of men, from what quarter soever it may come, and however high the pretensions to experience and patriotism are, which they may choose to assume. But, notwithstanding my anxiety to preserve inviolate this Constitution, I am not to be diverted from my object, by every tocsin of alarm which gentlemen may think fit to sound. Let me not be told of dangers to the Constitution, and of dangers to the Union. Contemptible, indeed, is the basis on which that Constitution rests, poor is the compliment to the good sense and patriotism of the people of America, if that Constitution and their liberties can, as has been contended, be shaken to the centre by the repeal of a single law, of but a

JANUARY, 1802.

Judiciary System.

SENATE.

single year's duration; suspicious indeed in its origin, burdensome and useless to the community, and affecting simply a few individuals, interested against that repeal, by paltry pecuniary considerations only.

I shall commence the remarks I am about to make, by asking a single question, which applies to all the observations of the gentleman in the opposition. Has any gentleman shown, or attempted to show, that the increase of courts and judges by this law was necessary or justifiable from the state of things, at the time it was passed? They have, I admit, attempted to show by reasoning at a great distance, that they may be wanting hereafter, that our empire is large, that it is populating fast, and that insurrections might happen. Indeed the gentlemen in the opposition have taken different and inconsistent ground. The honorable gentleman from New Hampshire, venerable from his years, and respectable from his talents, tells us, this law was not the offspring of a night, but has been well matured. The gentleman from Vermont requests that we may not prostrate measures from pique. The gentlemen from Massachusetts takes different ground and denies the power of Congress to repeal the law; and the gentleman from Connecticut says, that the original law establishing the judiciary was but an experiment; and that experience was the only sure test of all human contrivances.

Now for the consistency of gentlemen. Some contend that the law was well matured, and ought not to be dispensed with. Others, that we cannot repeal it at all, whether matured or not matured; and others, that it is part of a system of experiment. If, sir, the first law was an experiment, this law is, of course, an experiment upon an experiment. Now for the reasoning of the gentleman from Connecticut. "Experience is the only sure test of all regulations;" therefore you may make an experiment, and even an experiment upon an experiment, but yet these experiments are unalterable. This is really an original notion about experiments; that you may try them to see if they will answer, but whether they do or not, they are fastened on you.

The honorable gentleman from Georgia could not, after two explanations, atone to the gentleman from Connecticut for an inadvertent expression, dropt by him in the warmth of argument, which carried an insinuation that this law was made in a passion. Let the gentleman from Connecticut, therefore, have it as he stated it, that the law passed with great coolness and deliberation; if gentlemen then supposed it was to be an irrepealable experiment, and to be entailed on their country, I will say, it was a wanton experiment; I will say more, it is an experiment which, instead of being justified by a shadow of necessity, was negatived by the existing state of things when it was made; and that it was an experiment never made upon earth before, to try how courts and judges would answer without business. The absurdity, moreover, with respect to this strange doctrine of irrepealable experiments, is increased, because some gentlemen admit, that you may modify and change the law, but

not so as to affect the judges. I understand them then on that point to mean, that you may modify and change the law as you please, provided you increase the number of judges, or the expense of the system; but that you violate the Constitution, if you diminish the number of judges, or attempt to economise the system: or, in other words, it is Constitutional to abolish any part, or all of the system, but what relates to the salary part of it; which in plain English would be, "do what you please, gentlemen, with our system; but spare, oh spare those for whom the system was made, the judges."

The gentleman from Massachusetts asks for any instance of an attempt similar to the one under consideration. If he meant of an example of the abolition of courts and judges, which had become unnecessary, I refer him to the examples of Maryland and Virginia, already cited; States composed of one million two hundred thousand inhabitants, and composing more than one fifth part of the Union, who have each exercised that power. An instance, exactly or very nearly similar to the one under consideration, cannot, I suppose, be adduced; for I would ask him, in my turn, if he can show me in the Union, or the universe, an instance of a set of courts created without any business for them to act on, and beneficial to the judges only?

The gentleman from Massachusetts has conceded a point, which is at variance with the principal ground he has taken. He admits, if a judge in a particular district be incompetent from insanity, disability, or other sufficient cause, to perform his duties, Congress might repeal so much of the law as relates to his district, and thereby put down that judge. How is this? If a law can be repealed, and a judge be put down, because he is unable to discharge the duties of his office, cannot a law be repealed, and a judge be put down, where he has no duties to discharge? If, because a judge who cannot discharge the duties actually assigned him, (although by the act of Government) may be dispensed with, is it sound reasoning to say, that you cannot dispense with a judge, although you have abolished his duties? Again, pursuing the gentleman's own case, if part of a law can be repealed, and a particular district and judge put down, what is it that arrests your power, as to all the districts, and the whole corps of judges?

[Here Mr. J. MASON rose to explain, and said the gentleman had misunderstood him. The idea he intended to convey was, that if Congress had power to put down one judge or one district, they had the power to put down all the courts and judges, but that they had no power to do either.]

MR. BRECKENRIDGE said he was sorry he had misunderstood the gentleman; he had so noted his observation; but he would then beg leave to notice an observation of the gentleman from New York, which applies to this part of the subject. That gentleman has admitted that you may remodel your courts for the benefit of the people, but you cannot affect the judges, for they are *in* (to use his expression) under the Constitution; and he contends that not only the first section of the third article is imperative, but also the eighth

section of the first article, which gives Congress the "power to constitute tribunals inferior to the Supreme Court." This last section gives to Congress the power also to pass bankrupt laws, naturalization laws, tax laws, &c. &c. Are all these powers imperative also? And after you have established a post-road, passed a bankrupt law, or a tax law, are they all irrevocable, and are the officers created by them all also under the Constitution? The same construction applies to all, and shows them all to be discretionary powers. But this modification is to be for the benefit of the people. Can it be for the benefit of the people never to abolish courts? Two instances have been already cited. And what principle is it which ought solely to actuate legislators in enacting, modifying, or repealing any law, but the good of the people? Gentlemen really argue as if they considered courts made for the judges and not for the people.

Suppose this subject could be discussed by the people and the judges, what would be the language of each? The people would say, these additional courts are totally useless. The judges would reply, (if they hold the same opinions that the gentlemen in the opposition do,) that they are not useless, for they tend to inspire terror, and keep men honest. The people allege there is no business for them to transact. The judges answer, that the country is increasing fast in population, and there will be business, perhaps, by and by. The people contend they ought not to incur an expense without some advantage. Their honors reply, it amounts to but one cent a man, and is not worth growling about. The people, however, declare their determination to abolish these courts, as things for which they have no use. The judges then reply, in the language of the gentleman from New York, "You are a den of robbers, your Constitution is gone, and all men fly your shores."

The gentleman from Massachusetts admits the President has power to remove at pleasure all officers appointed by him but the judges, but does not see the force of my application of it. I apply it in this way: Although those officers have a right to hold their offices at the will of the President, and the Legislature cannot remove them during the continuance of their offices, yet the Legislature can remove without the will of the President, by abolishing their offices. In case, for example, the excise law is repealed, what will become of the supervisors, and other officers created by that law? They will go out with the law; for an extinguishment of their duties will necessarily carry with it an extinction of their offices, whether the President wills it or not.

But a judge stands on more independent ground. He shall not be removed at the will of the President, nor be starved out by the Legislature. He shall be removed from the exercise of his duties for misbehaviour only, whilst exercising those duties; and during the continuance of his office, or, in other words, his duties, the Legislature shall not diminish the consideration annexed to those duties. His independence and honesty in office,

therefore, are sufficiently secured against Executive or Legislative influence.

But the gentleman from New York has racked his very fertile imagination to render familiar to us by comparisons this wonderful and unprecedented thing—an officer without an office, a judge without a court, without duties, or without authority. He has likened him to a bridge, to a boat, to the national debt, and to an eight per cent. usurer. I will spare your gravity, and that of the Committee, by refraining to examine the similitude as to the first two objects. What likeness is there between the salary of a judge and the national debt? The national debt is a vested right—a right not accruing for services which may be rendered, but for services or money actually rendered or advanced. It is a debt, the consideration for which we have acknowledged to have received, and for the discharge of which we have pledged ourselves. It is a debt we are under moral obligations to pay, having previously received from the creditors its equivalent. How stands the case of the salary, which is said to be apposite? Is that a vested right? Is that a debt for which the community have received an equivalent? It is neither. It is a debt which, from its nature, the public faith cannot stand pledged to pay, except so far only as the services actually performed require; it being dependent in its very creation on services to be performed, and which may be dispensed with when they are no longer wanted.

Is the case of the eight per cent. usurer more apposite? If the occasions of men induce them to resort to the hoards of usurers, it is a voluntary act; they know its intent and consequences, and they ought, in justice, to be bound by their contract. Although Shylock may not be entitled to his pound of flesh, yet he is entitled to his usury and interest. And the case of the petty usurer stands on the same ground with all those important usurers who loaned at eight per cent. their money and stock to the United States during her late preparations to fight the French.

The gentleman from New York expresses his utter astonishment at the idea of judges and courts being too numerous, and refers us to the example of Alfred, whose courts and judges were so numerous and well organized, and had imposed such terror into his kingdom, that a purse of gold might lie in safety on the highway. I remember reading, long since, of these hundred courts, courts leet, courts baron, &c., and, if I am not mistaken, sir, he had a court of chivalry, too, of much about the same value and advantage in his kingdom as your additional courts are here. But if the gentleman meditates such extension and perfection in our Judicial system, why not resort to the fountain-head, and take example from Moses, who is certainly higher authority. He, sir, established his rulers, or judges, of thousands, of hundreds, of fifties, and of tens; and men, too, says the book, hating covetousness; that is, I presume, having no salaries. But I take it that both Alfred and Moses had a wider range in legislation than this Senate, and therefore their regulations cannot be very applicable.

JANUARY, 1802.

Judiciary System.

SENATE.

The gentlemen both from New York and Connecticut have pressed upon us the policy of increasing courts and judges, to prevent crimes and wrongs, to protect the weak against the strong, and insure virtue and humanity among the people. I deny both the proposition and inference drawn from it, in the extent contended for. From whence, I ask, do gentlemen draw their authority for such extensive legislation? From whence arises their power to pass these laws to prevent crimes, to protect the weak against the strong, and to punish the guilty? Not from the Constitution, I will safely affirm; for, under it, but three or four species of crime are punishable by Federal laws, to wit: treason, piracies, and felonies on the high seas, offences against the laws of nations, and counterfeiters of securities or coin of the United States. These constitute their powers on the subject of criminal jurisprudence, and are the sum total of our powers, written or unwritten; unless, indeed, the gentlemen draw some of their authority for their extensive notions of legislation, from the *lex non scripta* of Alfred's country, which I am told some gentlemen consider as attaching itself to our Constitution. But, admitting the proposition to be true, is the conclusion drawn from it well founded, that a multiplicity of courts and judges inspire terror, and prevent litigation and the commission of wrongs? I confess I am now for the first time to learn, that to inspire terror and prevent wrongs you ought to embody an army of judges; and that to support or discourage litigation, you ought to embody another set of men, their general attendants, called lawyers, who, it seems, for the first time, are to become peace makers; who, with their robes and green bags, will strike such terror into the nation, that a purse of gold may hang in safety on the highway. Halcyon days these, indeed, which are promised from a continuance of these judges; and if not visionary, I could then answer the gentleman from Massachusetts in the affirmative, that the millenium was indeed approaching.

The necessity for numerous courts and judges is also insisted on by suggestions that foreign invasions may happen; that consequently great revenues will be wanting, and consequently numerous courts to enforce their collection. This is reasoning at a very great distance indeed from the subject, to prove its utility. But I am willing to indulge the gentleman, and admit that invasion will happen, and annually, if he chooses, and insurrections quarterly; I will then contend, that, until the population of America amounts to five times the present number, we shall not need as many judges as there now are, to administer justice on all the subjects which can rightfully, under the present Constitution, be carried to Federal adjudication.

The gentleman from New York has favored us with another argument on this head, not addressed to the fears, but to the pride of the people, and asks if the paltry additional expense ought to have any weight, when it cannot amount to more than one cent a man? I answer, sir, that one cent a man, will not, to be sure, oppress the people; but

this is a very unfair way of appealing to the ability of the people, by showing them among the thousand items which compose the aggregate of their burdens, what each man's proportion is of one very small item. But as that honorable gentleman has told us, "that he considers the government resting on the reason of man, as a solecism," I should suppose, with due deference to him, that the better way would be, to govern this machine, man, to increase the army, rather than the judiciary. Twenty thousand regulars, properly disposed of, would make us as honest as Alfred's subjects, and would cost us only three or four dollars a head. This too is a kind of terror familiar in countries like Alfred's; but an army of judges is a new experiment, as we have been told this law is, and was reserved for the politicians of these, our enlightened times.

Much has been said about the hardship which will arise to judges, who have quitted lucrative employments and taken seats on the bench, considering them as permanent provisions. One gentleman describes them as a venerable set of men, bending under the weight of years, and not possessing the agility of post-boys: another, as men who have been induced to abandon the active and lucrative pursuits of the law. Take them as portrayed by either gentleman. If they are men of the first description, there can be little hardship in permitting them to return to that state of tranquillity and retirement, from which they must have been no doubt reluctantly drawn; and to which their age and infirmities must again invite their return. If they are men of the last description, can they not readily return to those same active and lucrative pursuits which they had quitted? Have their talents and faculties, for the pursuits to which they were bred, been palsied, by a seat for a single year on the bench? And can that single year's derangement of their affairs be retributed only, by a pension of two thousand dollars a year for life? Such calculations and demands must illy comport with the characters of those of the first description; and they are poor compliments indeed to the talents, legal acquirements, and legal standing of the second. But is there no hardship on the side of the community? Is it enough for them to be told by these judges, true it is, you have established a useless set of courts; but we have been lucky enough to get into office, the Constitution protects us there, and get us out if you can? I doubt, sir, this reasoning would not be satisfactory, to men possessing common honesty, and the ordinary notions of right and wrong. It would not, however, be taken as a satisfactory set off against the fifty thousand dollars annually.

The gentleman from New York has contended strongly against an idea which he apprehends is entertained, of increasing the power of the States, by lessening your Federal courts.

I hold out no such idea; it was a surmise of the gentleman. I wish the Federal Government to possess and exercise all its rightful powers, but no more. I wish the States also to be left in the exercise of theirs. I do not wish to see everything

valuable extracted from them. I do not wish to see all possible subjects drawn into the great vortex of Federal legislation and adjudication. I do not, in short, wish, as some gentlemen may do, to see one mighty and consolidated sovereignty collected from and erected on the ruins of all the State sovereignties.

It is now growing late, and the Committee must be fatigued; I will trespass very little longer on them. Many of the observations which I have answered, were, it is true, very foreign and irrelevant to the subject. They were, it is true, but the gleanings, as the gentlemen who have preceded me left little for me to answer.

But permit me, for a single moment, to draw gentlemen's attention to the real merits of this question, and ask, have the arguments been fairly and satisfactorily answered by the gentlemen in the opposition; arguments which went to the many difficulties and absurdities which would grow out of the Constitution under the construction against which I have contended; which went to show, that the Constitution could only be fairly and rationally construed to secure the independency of a judge in office during the continuance of that office; which went to show, that the power of Congress to erect inferior courts was discretionary, and was therefore necessarily accompanied by the power to abolish them; that by the construction contended for, sinecure offices for life would be erected under the Constitution; that the absurdity of an officer without an office would exist; that the power of legislation on judicial subjects would in effect be arrested; indeed, destroyed; and that it would produce the extraordinary phenomenon in our Government of an officer not amenable to your laws, to your Constitution, or to the people themselves? I appeal to gentlemen if these have been fairly and satisfactorily answered? They have not.

FRIDAY, January 15.

AARON BURR, Vice President of the United States and President of the Senate, attended.

The bill, authorizing the discharge of John Hobby from his confinement, was read the second time, and referred to Messrs. BALDWIN, J. MASON, and TRACY, to consider and report thereon.

The Senate took into consideration their amendments disagreed to by the House of Representatives, to the bill concerning the library for the use of both Houses of Congress; and

Resolved, That they do insist on the said amendments, ask a conference thereon, and that Messrs. TRACY and BALDWIN be managers on the part of the Senate.

JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed.

Mr. BALDWIN, of Georgia, observed, that in the

seat* with which he had been honored by the Senate during the preceding part of this debate, his duty had obliged him to pay particular attention to gentlemen who rose to offer their opinions; he had felt himself pleased and instructed by one of the most luminous discussions, in both views of the question, that he had ever witnessed, which he hoped and trusted would guide the Senate to a useful and proper result. In this late stage of the debate it could not be expected of him to be able to contribute anything new or important. But, as gentlemen had so generally thought proper to express their opinions, he would not withhold a public declaration of his own.

He thought the range of this question and the field of argument had been made more extensive than strictly related to the question; but they might be useful in leading to a final determination on the subject of the resolution now under consideration. The remarks that had been made of improper motives and designs, on the one side and on the other, either that there was an intention to urge forward the powers of the Government, till it was carried altogether beyond its principles, or that there was an inveterate system of opposition to it; which sought nothing less than its overthrow, he should take no notice of, as they had already been extended further than he had wished. His respect for worthy gentlemen, with the greater part of whom he had so long labored in our public councils, his respect for the people whom they represented, and for the State Legislatures, who had, on this occasion, preferred them to their fellow-citizens, it is to be presumed, from full experience of their talents and virtues, forbade him to entertain any doubt of their desire to promote the best interests of their country, and to preserve our excellent Constitution, which they are all sworn to support. If, at any time, observations different from these escaped him, he hoped they would be considered as the suggestions of his own infirmity, and not the result of deliberate reflection. His own general opinion on such subjects was, that it is the nature of all delegated power to increase; it has been very aptly said, to be like the screw in mechanics; it holds all it gains, and every turn gains a little more; the power keeps constantly accumulating, till it becomes absolutely insupportable, and then falls in ruins in a tremendous crash, and the accumulation begins again; so that the history of civil society is but a general view of these vast waves following each other, oftentimes in dreadful succession. That this was the tendency of society, he thought appeared in some measure from our own short history, whether viewed in relation to our State or Federal Governments; several of them had already made considerable advances in this course; he knew of none of them that had declined. Though he hoped and trusted that this fatal progression would be slower in our country than it had ever

*In the absence of the Vice President of the United States, Mr. Baldwin had been President *pro tem.* of the Senate, from the commencement of the debate, until this day, when the Vice President took his seat.

JANUARY, 1802.

Judiciary System.

SENATE.

been before on the face of the earth, and that it would allow to us many ages of great political happiness, yet he did not expect it would be found in the end to be an exception to his general remark. He alluded to several instances in the Federal Government, and observed generally, that as we were now in the thirteenth year under the present Constitution, as we had been thirteen years under the old system of the Articles of Confederation, he thought it useful in our reflections to make a comparison between them. During the first period of thirteen years, the Federal Government, as it was called, possessed neither Legislative nor Judicial power, nor any revenue at all; they were not able even to form their own body by compelling the attendance of their members; they attended, or were absent, as they pleased. Their ideas of the encroachments that it was necessary to make on the powers that were then in the possession of the State Governments, appeared to have been very different from ours; they carried on a long and obstinate war, and, as they supposed, had nearly finished a settlement of their accounts; and yet there was much less complaint of a want of power, or uneasiness and struggles for more, at the close of that first period of thirteen years, than at the present time. He should not enlarge on this view of the subject: when he saw that he was speaking in the assembly of the most ancient statesmen of our country, he knew that, though he barely glanced at the ideas, their own recollections would present them in all their extent. The observations that had been before made by gentlemen on this view, had been so general, that he could only meet and qualify them by other general observations, and he thought they did not furnish a foundation to apprehend an overthrow of the Government.

The resolution now under consideration proposes to reconsider and repeal the new Judiciary law passed last session. It does not follow that this is an effort of a general plan of destruction as applied to our Federal Government. All public bodies must, at some times, review their own proceedings, while the maxim remains true, that it is the lot of human nature to err, this must be the case; parliamentary assemblies have provisions for reconsidering their questions, and courts of justice for granting new trials.

The first and most natural source of argument that presents itself on such occasions is, the circumstances in which the act took place; to inquire whether there was any surprise or unfairness, not according to principle or customary form. Gentlemen have had the candor several times to acknowledge, and it was very fresh in his own recollection, that this was the case on the passage of the law which the motion proposes to repeal, that it was verily believed at the time not to possess an actual majority of the votes of the other House, and therefore every proposed amendment was rejected by its friends in the Senate, as they did not consider it safe to send it back open to any question in the House of Representatives. He instanced the proposed amendment to strike out Bairdstown, the place fixed by the law for the

court in Kentucky, which was acknowledged to be a proper amendment, and afterwards introduced in a supplemental law. He said he was himself now acting under an impression that the law never did unite here in its favor an actual majority of votes, according to the rules of the Senate and of the Constitution. He then read the rule of the Senate which forbids a Senator to vote on a question where he is interested, and a clause in section six, article one, of the Constitution, which prohibits a Senator or Representative from making an office to hold it himself. He referred, also, to the settled principle in the investigation of truth, that a person's relation of a common matter of fact in a question of a few shillings value could not be relied on, if he had even a remote interest in the result of it. He hoped his assurances would be accepted; that he did not make these remarks to excite any unpleasant sensations. He wished to avoid them; he touched them as lightly as he could, giving them their proper place in the argument; he was sensible they did not prove that law to be a bad one; but they formed the first and the strongest reason why the subject should be reconsidered, which is the main object of the present motion; for it was open to all amendments in its progress.

Another obvious source of argument, Mr. B. said, on this subject of repeal, is, the comparative merit between this new Judiciary law and the old one, which will be restored, if this is repealed, with such other provisions as may be thought necessary. The whole of the discussion at the last session was on this ground; it is familiar to us all; it was then ample and convincing, so as to produce the effect which has been acknowledged; no doubt it would do the same if repeated at this time; it is to be presumed the effect of it is not lost; to pursue it in all its details on this occasion would make the discussion altogether too prolix and tedious. There were, however, two or three points in the comparison, he begged leave a little to dwell upon. In taking a general look at the two systems, the strongest point of distinction which seizes the first view, is, that in the old system the same judges hold the Supreme Court here, and a court in each of the States, with the exception of the States over the mountains; in the new system, now proposed to be repealed, this is not the case; the courts in the several States are held by different judges. This had ever appeared to him a radical and vital failure in the new system; it deprives the judges of the opportunity of a full knowledge of local laws and usages, and destroys the possibility of uniformity; it is also a main artery of healthful circulation in the body politic. In giving a satisfactory administration of a Government over a country of this vast extent, the great object must be to avoid the necessity of dragging the people from the remote extremes, the distance of thousands of miles, to the seat of our Government, or far from their homes, where they cannot have the usual advantages in courts of justice. While two of the judges of the Supreme Court held a court in each State, this was almost entirely avoided, except in

SENATE.

Judiciary System.

JANUARY, 1802.

some of the largest States. The suits were rarely determined at the first court; at the second court, the judges were considered as bringing the sense of the Supreme Court on the subject; it seemed to give as satisfactory a conclusion to the business as if the parties had been themselves before the Supreme Court. Though gentlemen all appear to submit to the force of this argument, yet they suppose they defeat it by the vague and general declaration, that experience has proved it to be impracticable; that we should have no more venerable judges; that men must be appointed for their agility rather than their wisdom, &c. He averred experience had determined no such thing; very venerable judges had gone through that duty from the beginning of the Government, without any apparent injury to their constitutions, with as few resignations as ordinarily take place among the State judges, and, in fact, with less bodily labor than is required of many members of Congress for a much smaller compensation. He thought experience proved that men equal to the labor, and also well fitted for the office, might be found, rather than give up so indispensable a provision, especially as, under the present motion, additional provisions may be made to render the system more practicable and less laborious. The change that had been made was, no doubt, a great relief to the judges; but we have other and more numerous constituents whose relief must also be attended to.

2. Another strong point in the comparative view of the two systems is, that the new law now proposed to be repealed, attempts to draw off more business from the State courts to the Federal courts. When gentlemen talk of expediency, may they not be asked, what is the expediency of that measure? Will it make a more convenient and complete organization? When they talk of carrying justice to the door of every man, may they not be asked, whether that is most perfectly carrying justice to the door of every man? His situation in the former part of the debate was such, that his duty would not permit him to take notes of what was then said, but if he had the arguments of the gentlemen on this head before him, he should be pleased in applying it to every one of them, to see how they would appear to defeat themselves by the application of this principle. This, said he, goes directly to the great defect in the theory of the Federal Government, which has at all times given uneasy apprehensions to its best friends respecting the final success of this vast and benevolent experiment in Government. The idea of a Continent uniting under a General Government, which should settle general regulations, and do away the most common causes of war, is not a thought so much out of the ordinary subjects of reflection as to require any inventive or profound genius to call it into view. It is readily conceived, that the Eastern Continent, as well as this Western, might have often reflected on the practicability of this vast experiment; the great discouragement which has probably prevented it, has been, that the immense and unwieldy enginery which would be necessary to carry it on, to ad-

minister its laws, and manage its money transactions, with tolerable intelligence and fidelity, and keep up the great vital circulation, is not within the compass of human faculties and endowments. If ours fails, it will be from that cause; its wisest and best friends appear always to have been aware of it, and therefore have, as far as possible, directed it to a few great and general regulations, which seem indispensable, and which were least difficult in their operation; but that it should be put to ordinary business, then well done by the States, as though in its nature better suited to it than ordinary Governments, had always appeared to him to be the most unpromising direction that could be given to it. He considered that as the strongest possible objection to the new Judiciary law, now proposed to be repealed, that it was unnecessarily drawing the business from the States, where it was as well lodged, and probably as well conducted, as in any Government on earth, to the Federal establishment, where, if it was possible to conduct it at all, it was not possible to conduct it so well, and so much to the satisfaction of the people, for whom alone Governments are instituted.

The third source of argument which he should notice, was the document No. 8, sent by the Executive. As this had already been the principal topic of argument to several gentlemen, and had been placed in so irresistible a point of view, in support of the proposed resolution, he should add but few words upon it. It is said the document is incorrect; it is sufficiently correct for all the purposes of the argument, which depends not on there being three or four more or less suits in a particular place, but to show that the old Judiciary system was perfectly sufficient for all the business, and that the business was actually decreasing when the system was extended. To this the document is perfectly sufficient and conclusive. On this it has been observed, that there being but little business, and that decreasing, is so far from being an objection to the system, that it is the best argument in its favor; but this proves the perfection of the old Judiciary system, which was the cause of it, and is now proposed to be restored, and not the new, which is yet scarcely got into operation. If the decrease of business proved the necessity of the further extent of the system, in the new Judiciary law, the continuing to decrease, which appears since that time, proves that the system ought now to be still further extended.

Mr. B. said, he would proceed to submit a few remarks on the view that had been taken of the subject in its relation to the Constitution. It seems that this part of the Constitution is considered as capable of different meanings, and from so many different opinions expressed upon it, he had no doubt it was the case. Although Governments of written laws, and written constitutions, are undoubtedly a great and invaluable security to the regular administration of public affairs, yet it must be acknowledged, that, like everything human, they are imperfect; they clearly define and settle many things which would otherwise be afloat;

JANUARY, 1802.

Judiciary System.

SENATE.

but they do not settle everything; questions will arise in administering them, which occasion honest doubts. When a new law is passed, the most upright and enlightened courts require a length of time to settle the practical questions under it, and to give definitive meaning and precision to all its parts. This must be more likely to occur in written constitutions, which embrace such variety of important subjects, generally in a very small compass. Many questions of this kind have already been so far settled by practice on our Constitution, that they have rarely been stirred of late. Those occasions had been represented at the time, as very threatening to the Government; Congress was then nearly equally divided upon them, and they did not, in the end, prove so disastrous as had been predicted; they had generally terminated in favor of the strict rather than the literal construction of the instrument, not to make the words cover the most that they possibly could. It had been contended in the early years of the Government, repeatedly, and with much earnestness, that the preamble of the Constitution was a grant of powers, and when a measure was proposed, if it could be shown to have a tendency "to form a more perfect union, establish justice, and insure domestic tranquillity, &c., it was Constitutional; the words "general welfare" in article 1, section 8, had been often urged for the same purpose, and as authorizing Congress to build manufacturing towns, a National University, and to carry on any pecuniary enterprises, with the public money; deliberate practice seems for many years to have settled the construction that those words should not be considered as a distinct grant of power, but a limitation of the power granted in the former part of the article, to lay and collect taxes, &c. He instanced also the power of the President to remove officers, and several others to the same effect. It was some reward, he said, for the trouble they had on similar occasions, that the greater part appeared now to be settled, as such instances occurred much less frequently than formerly: the one which now presents itself is new; he expressed his confidence that a result as proper and satisfactory would take place on this, as on former occasions.

He believed there were several points of this nature in relation to the Judiciary on which the other departments of the Government considered themselves as yet to have no settled practice; on which he observed generally, that if it had been intended to convey those distinguished powers which have lately been claimed in their favor, it might naturally have been expected that it would have been done in very conspicuous characters, and not left to be obscurely explored by construction, not enlightened by the least recollection from anybody, on a subject and on an occasion certainly of the most impressive kind, and so little likely to have been forgotten. He said, the extent that is now claimed to those words in article 3, section 1, "that the judges should hold their offices during good behaviour," was greater than he had before contemplated. His own judgment adopted the construction that had been given by several

gentlemen who supported the resolution, and which they had illustrated so much at large, and so ably supported, that he should add but few words upon it. The phrase creating or establishing office, is familiar in our Constitution and laws, and may be done by the Constitution or by the Legislature; its attributes are like the ordinary attributes of legislation, to be conducted as the wisdom of the Legislature, and the circumstances of the country, may direct. Office, in its original use, is synonymous with duty. When the system of duties is so particularly defined and prescribed by the Constitution, that the functionary is able to go on in the discharge of the duties, the office is created or established by the Constitution; when this is done by law, it is said to be created or established by law; the first may be of equal duration with the Constitution; when it is created by law it may be of equal duration with the law, but in neither case can it be of longer duration; to suppose it, appeared to him absurd. When it is said, "the judges shall hold their offices during good behaviour," the first and obvious meaning is, that it should be theirs during life, or as long as there was such an office, unless they resigned or were removed for misbehaviour, that it should not be taken from them to be given to another. In such questions of constructions as to the meaning of words and phrases, it is very difficult to prove that they must mean precisely this and nothing else; it was satisfactory to him that this construction fully satisfies the meaning of the words: without doing violence to the other parts of the instrument, it does not interfere with and destroy the words which gave the Legislative powers to Congress. It is known that the importance of the integrity of Legislative power, which is sometimes spoken of under the expression "omnipotence of Parliament," is at least as favorite a part of the theory which we have been most in the habit of consulting, as the independence of the judges, particularly in the extent which it is now proposed to give it. This clause is speaking of the *tenure* of the office, and not of the *existence* of the office; that had been aptly disposed of in that part of the instrument which is on that subject, and is to be sought for among the Legislative powers and prohibitions of power.

On the tenure of office, the Constitution says, "the President shall hold his office for four years, Senators for six years," &c., "judges during good behaviour."

All these suppose the office to be in existence, but are not designed to authorize the functionaries to hold over beyond that period, or to affect the power which is given to change those instruments. The judges shall have the highest possible tenure, they shall hold their offices as long as the Constitution of the country, and the constitution of their offices exist, if they behave well. He could not consider the Constitution as contemplating their surviving or holding beyond the existence of the Constitution of the country, or the constitution of their office. It would be a very strained construction to consider that as intended. It would also be a very useless one; it goes to

prevent the Legislature from the right to make laws on the subject, as the circumstances of the country may require, without which he did not see how the Government could be carried on, and yet does not secure the judges from intolerable persecutions and oppressions by those laws; in short, it does all the harm and does no good.

The more violent partisans of this theory of independence of judges say, that our construction destroys the principle altogether, that the Constitution might as well have said nothing, that it leaves the judges entirely at the mercy of the Legislature. This is arguing from the abuse of power, and ought not to be admitted. It is not to be presumed that when a Constitution or a Judiciary system is well adapted to the circumstances of the country, and gives satisfaction to the people, that it will be lightly changed or altered, or that it can be put down or destroyed merely to get rid of the officers; they may abuse any other article of power to as great excess; they might prescribe intolerable duties, as has been observed, and thus oblige the judges to resign, &c. He would not pretend to deny but that the words might be taken in a more extensive scale, but he thought this the most natural, and sufficient to satisfy them, and that there are not many pages in the Constitution in which as probable and promising a criticism as the one that has been made on this occasion, might not be taken and introduced to disturb and unsettle our practice. It is to be recollected that this theory of the independence of judges has already been carried by us further than anybody else has carried it, in placing them beyond the reach of removal, on the joint address of both branches of the Legislature; he was not convinced that any important effects had flowed from it, or that experience had as yet determined anything so certain and encouraging on this theory, as, at this time, to warrant a further extension of it by construction.

Another meaning which has been given to the words, is, that the Legislative power on this subject shall remain entire, to institute and shape the courts as they may think proper, with the one exception, that "there must be one Supreme Court;" but that judges, once appointed, are authorized to hold their pecuniary emoluments during life, unless removed by impeachment. This construction does not go to defeat the proposed resolution; the resolution says nothing about what shall be done with the present judges; they may get their full salaries during life, if it is their Constitutional right. He thought that of very small importance in the argument, and hoped those gentlemen would not be prevented by it from voting for the resolution, if they thought it had been sufficiently supported by arguments derived from the nature of the subject, which he thought was the true ground on which the question ought to turn.

But a much more extravagant construction on those words, he said, had been taken; that the words, "they shall hold their offices during good behaviour," were to be considered as a limitation of the power of the Legislature in creating and fashioning their offices; that the offices are to be

considered as theirs, as a vested right; that it would be absurd to say they should hold their offices, that they were a vested right, &c., when they might any day be taken away by a change of the Constitution, or a repeal of the law which creates it, and which is the constitution to that office; that you should not kill the man, but might sink the ship on which his life depended. Some also lay particular stress on the words "their offices," as meaning a particular and definite system of duties, which the judges had received from the Government by the contract; that the Legislature had no right greatly to vary or change this definite system of duties, so as to make it very burdensome and oblige them to resign, and in that way affect this all-important provision of the Constitution, the independence of judges. This appeared to him so extravagant, and inevitably led to such a train of consequences, as had been fully stated by those who had gone before him—he was so confident it could not be adopted and practised upon, that he scarcely apprehended any danger from it. To be sure, if the offices are theirs, a vested right, a matter of contract between them and the Government, there is an end to all power in the Legislature to change them, or even legislate upon them, without the consent of the judges; they must survive the law creating them; and they must also survive, even though the Constitution itself should be changed. If any construction does violence to the Constitution, and defeats its most essential provisions, this is the one, and needs to be made the subject of all the warnings which had been addressed to us on those important grounds.

Mr. HILLHOUSE, of Connecticut, observed, that he opposed the passage of the law now proposed to be repealed; but for the purpose of getting rid of a law which he did not like, he could not feel himself justified in tearing out a leaf of the Constitution. In attempting to correct an error of a former Legislature, we should be careful not to commit one, in its consequences, more fatal than the first. He did not hesitate to declare it as his opinion, that not only the law under consideration, but every other that had been passed on that subject, might be repealed; but he was surprised to hear it said that this could be done in a way that should deprive a judge, duly appointed, of his office and salary. The words of the Constitution are direct and positive, that "the judges both of the supreme and inferior courts shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." The Constitution no where says that the Judiciary system of the United States, when once formed, cannot be altered, the courts new organized, old ones put down, and new ones created; that is left to Legislative discretion, under this restriction only, that there shall always be a Supreme Court, and that no judge shall be deprived of his office or salary. To abolish a court, without destroying the office or salary of the judge, has not in practice been found difficult. Most of the States, where judges hold their offi-

JANUARY, 1802.

Judiciary System.

SENATE.

ces during good behaviour, have been in the habit of doing it; the United States have done it; but in no instance has a judge been deprived of his office or salary, unless in that stated to have recently happened in Maryland; which, if the facts are rightly reported, ought not to be respected, much less imitated by this Senate. By the law of Maryland, courts had been established, and judges appointed, who, by the Constitution, hold their offices during good behaviour. This law was repealed, and, during the same session of the Legislature, a new law was passed establishing the same courts, and almost in the same words of the former law. What could be the object of this repeal? Surely none other than the turning the judges out of office. Could that be less a violation of their Constitution than the passing of a law directly removing from office the same judges? It is too absurd to say that indirect means may be used to effect what might not be done by a direct and positive law, or is absolutely forbidden by the Constitution to be done at all.

Here Mr. H. stated the various laws of Virginia, in which they new-modelled or altered their Judiciary system, by which, said he, it appears that this ancient and important State has ever been careful not to violate the principle here contended for, and had, in no instance, deprived a judge of his office or salary.

To justify such a construction of the Constitution as will warrant a repeal, it is said if a law may pass one session authorizing the appointment of sixteen judges, who cannot be removed, it may be extended to sixteen thousand—arguing that, because the power may be abused, that therefore it does not exist. But will this argument do? Let it be tested by other parts of the Constitution. Congress are not limited in their power to borrow money, or raise armies, which, during the period of one Congress, might be used to the total and irretrievable ruin of the nation. The treaty-making power is vested in the President and Senate, a power which has been recently exercised in ratifying the convention with France, by which is relinquished the claims of the citizens of the United States for spoliation to a great amount; there is nothing in the Constitution that restrains this power or the abuse of it, or that would have prevented the introduction of an article into this same convention stipulating the payment to France of an annual tribute of twenty or thirty millions of dollars, a sum absolutely ruinous to the United States. The same remarks will apply to sundry other powers; yet it will not be said, that because these powers are liable to this abuse that therefore they do not exist. There never was a Constitution or form of Government which contemplated it as a possible case, that the Legislative power should be lodged in the hands of madmen, or which attempted to provide against such an event. Should this be the unhappy situation of any country, there would be no remedy but a resort to revolutionary principles. From whom is this abuse of power respecting the Judiciary apprehended? The Legislature; the same Legislature in whose hands we are told the rights

and liberties of the people are perfectly safe. In no part of the Constitution is the President directly vested with power to remove any one from office; on that subject it is silent; the restriction therefore, in relation to the judges, cannot refer to the President, it must have been intended to secure them against every department of the Government. Any other construction would render the restriction futile, and wholly destroy the independence of the judges, who would be liable to be removed from office at every session of Congress. All that would be necessary would be a repeal of the law under which they hold their appointments, which, if the principle of this resolution is admissible, may be done without any violation of the Constitution; it will certainly carry us to that extent. It was most certainly the intention of the Convention who framed the Constitution, to secure the independence of the judges; it was thought by every one to have been done in a most effectual manner, until this new discovery, which is of very recent date, of resorting to a repeal of the law. The independence of the judges is certainly very important to insure a due administration of justice, which in every well regulated Government is considered as a matter of primary importance. Other departments of the Government may be more splendid, but courts of justice come home to every man's habitation; their importance is felt by every individual, to them he looks for security and the protection of his person and property.

The Constitutions of States are limited in their operation, and may be easily altered or amended; different, far different is that of the United States. This is the bond of union between sixteen sovereign independent States, spread over a country of vast extent, influenced by different views and interests; watching with a jealous eye the movements of the General Government; and whom it has been found difficult, and will grow more and more difficult, to unite in any agreement to alter or amend this Constitution, and which, if once destroyed by any important or flagrant violation it is my firm belief will never be renewed.

Mr. WRIGHT, of Maryland, observed, that he had been called forth early in this debate rather to defend the State he had the honor to represent, from the unkind imputation of "a violation of her Constitution," (in which he flattered himself he had succeeded even to the satisfaction of the honorable gentleman himself, who, he presumed, from misinformation, had been induced to make it,) than from any desire at that time to enter into the discussion of the merits of the resolution then under the consideration of the Senate. He, therefore, hoped he should now be indulged with a few observations on the merits of the resolution before them, and although it had already occupied so much of the time of the Senate, and had been so ably and so fully discussed by honorable gentlemen of great abilities and experience on both sides, yet he should presume to call their attention to such prominent features of the case as had been impressive on his own mind.

This subject has been brought before us in the

imposing shape of a recommendation of the President of the United States, the national, the constitutional organ of the Government, in his official Message to Congress on the state of the Union; a duty imposed on him by the express letter of the Constitution; a duty he was bound by the most solemn obligations Constitutionally to discharge; a duty that renovated and enlightened America had too recently selected him to discharge, to readily to believe he would unconstitutionally abuse.

Sir, this subject has been submitted to the consideration of the Congress of the United States—a body selected for their patriotism, their wisdom, and their virtues—the Constitutional organ of the legislative will of the nation, in order to inform their minds, and point their attention to the great and important subjects on which they were convened to deliberate, on the honest discharge of which everything valuable to America depends. This subject had not been brought before them in a manner to coerce a hasty or an immature decision on the subject, nor had it been left on the vague foundation of suggestion or conjecture, but it had been brought before them in a manner that imposed deliberation, and had been supported by documents that had paralyzed and almost sealed the lips of opposition on the point of its expediency.

But, however imposing the manner, or however incontrovertible the matter on which the resolution was predicated, yet, honorable gentlemen are found on this floor to oppose it as a measure of that Administration they feel indisposed to support, particularly as it implicates the policy of the late Administration, and indeed a measure which was the work of their own hands, which mankind at all times have been prone to admire, and however convinced of their errors, have, with great reluctance, been brought to confess them.

Sir, it would seem by the course of the arguments on the present question, that we had it in contemplation to break down the Federal judiciary altogether, and to subvert *ancient* foundations, and as if the agents or *perpetrators*, (as the gentleman from Connecticut has politely called them,) with polluted hands intended to destroy that Constitution they had sworn to support, and to leave the community without a judiciary to enforce obedience to the laws, whereby the strong might give law to the weak; the rich oppress the poor, and the artful and the wicked impose on the weak and uninformed; and all with impunity; and indeed would induce a belief, that they alone had either life, liberty or property to be protected. But the fact is, that the old judiciary system, that has answered every necessary purpose from the commencement of the Government, remains inviolate. It is the new system established at the last period of the last session of Congress—a system whereby sixteen new judges were introduced as circuit judges, several of whom had been promoted to be circuit judges from district judges, to make room in the district courts for gentlemen of Congress, who assisted to establish this new system, and who therefore were by the Constitution disqualified to accept that office, created during

the time for which they were elected to serve in Congress, and, as he had said before, thereby indirectly minted offices for themselves, and the favorites of an expiring Administration—a measure resisted by the Republicans in both branches of the National Legislature; a measure which was carried into operation by those from whom the people have revoked their confidence, at the moment their power was passing away, at a time when the business in the Federal courts had declined nearly one-half, and when the Sedition law had ceased to be an engine to restrain the liberties of the press, and to punish men for the expression of their honest political opinions, was all that was intended to be repealed.

Here let me call your attention to the letter of the resolution, which, on reading it, will be found to extend no further than to the repeal of the act of Congress of the last session, by which sixteen new *Federal* judges had been created, and a system established at the annual expense of \$130,000. We are now called on, as the representatives of the nation, as the organ of their legislative will, to determine whether this law, which has been ever odious in the sight of the people, and whose birth was not entirely legitimate, shall be repealed. We are informed by the President himself, that it is unnecessary, and that fact has been established by the document submitted to us on the subject of the judiciary courts of the United States. We are informed also, that on the repeal of this law, and the making some retrenchments in the Naval and Military Establishments, which have been already progressed in, is predicated the repeal of the odious internal taxes; and in this manner, and to effect this desirable purpose, this subject is brought before us. Can we then hesitate to relieve our people from the burden of their odious internal taxes, by the repeal of this unnecessary law? I should presume not, if governed *singly* by the regard to the public welfare; but we have, notwithstanding, been told by honorable gentlemen, on the other side of the House, that this law ought not to be repealed:

1. Because it is inexpedient;
2. Because it is unconstitutional.

Upon the first point, that of its expediency, he should not detain the Senate longer than to observe, that the document on our table shows, that the old judiciary system, which had been coeval with our Government, and had been in operation from its commencement, had been at all times sufficient for the transaction of all the judicial business of the Union; that the business in the courts had already declined nearly one-half under the old system, even at the moment of the establishment of the new one; also, that it was contemplated to repeal the odious internal taxes—a considerable source of litigation; and that the more odious Sedition law had expired, which they all knew had been a source of considerable litigation, and he was sorry to add, had not placed the judiciary above the reach of abuse; but whether deservedly or not, he *dared* not affirm; and that the peace we had lately established with France had put an end to another source of liti-

JANUARY, 1802.

Judiciary System.

SENATE.

gation, that of admiralty causes on the prize side of the court of admiralty. From this view of the subject, he himself was entirely satisfied of the expediency of the repeal, and had little doubt that every gentleman was equally so, that *any* evidence could convince.

As to the point of its being unconstitutional: It will be recollected that the President himself has recommended the repeal of this law; an evidence of its constitutionality of so high authority with the enlightened people of America, that if it stood singly on that, it would require a *federal host* to shake it; but we know there are honorable gentlemen on this floor not disposed to *confess* their respect for that authority on this occasion. Those gentlemen I will refer to the Constitution itself, from whence I presume it will appear that the power now proposed to be exercised is clearly delegated.

In the eighth section, ninth article, Congress shall have power to constitute tribunals inferior to the Supreme Court; in the seventh article, Congress shall have power to establish post offices and post roads. These are the precise expressions by which Congress acquire the power over the subjects of the inferior courts, and of the post offices; there is no other authority given them but by these articles; there is no express authority to abolish either courts or post offices, but the subjects are respectively given to Congress to exercise their legislative will upon, in such manner as should best promote the public good. I would ask gentlemen if Congress have not established post offices without number, and abolished them at their will and pleasure, by virtue of their authority under the seventh article above stated; and I should be glad to hear from whence the authority to abolish post offices is derived, unless from the article that *only* expressly authorizes their establishment, and whether the authority given over the subject has not in all past times been held sufficient to justify the abolishing as well as establishment of post offices? He then called on the gentlemen in the opposition to point out a difference between the powers of Congress over the inferior courts and the post offices, and to show how it was that Congress could abolish the post offices under an authority to establish them, and not to abolish the inferior courts under the like authority to establish them; and how the same phraseology that is used in vesting the power in Congress over the post offices and inferior courts, can be tortured so as to authorize the abolishing post offices, and not to authorize the abolishing the inferior courts. But we have been told that by the first section of the third article, this business is to be explained; let us examine it: The judicial power of the United States *shall* be vested in one Supreme Court, and in such inferior courts as Congress *may* from time to time ordain and establish. The judges of the supreme and inferior courts shall hold their office during good behaviour. By this it has been insisted, that the judges of the inferior as well as the superior courts hold their offices during good behaviour, and that we have no power to pass this repealing

law because it would operate to dismiss the judges. He said that Congress, by an extraordinary legislative act, with the concurrence of two-thirds of the States, had a power to abolish even the Supreme Court. He asked, in such case, what would become of the judges? Would they be entitled to hold their offices as judges, when in the eye of the Constitution there was no such office? No, certainly! The Constitution meant, and could mean nothing else than a judge under the Constitution, and the moment the Constitution discontinued the office the judge, under the Constitution ceased to have a political existence, and would not be known to the Constitution as a judge. So, he concluded, by an ordinary act of legislation, the Congress might repeal the law erecting the inferior courts, and on the repeal of the law from whence the legal existence had been derived, constituting them judges, he should be glad to hear how they could be judges; that being created by the law, they derived their existence from the law, and could not as judges survive it; the Constitution means a judge known to the law, and not the man who had been a judge, after his political dissolution. He insisted that Congress can establish legislatively a court, and thereby create a judge; so they can legislatively abolish the court, and eventually annihilate the officer; that the inferior courts are creatures of the Legislature, and that the creature must always be in the power of the creator; that he who createth can destroy. But we are asked, by the honorable gentleman from New York, in answer to this, "has a man a right to destroy his own children?" Mr. W. said he had been taught to believe that man had not been his own creator, but the happy instrument of creation. But this power that is now denied to us, had been exercised by the gentlemen themselves, in the very law that is now intended to be repealed. You will see, by adverting to that law, the district courts of Tennessee and Kentucky are expressly abolished, and the office of a district judge for the States of Tennessee and Kentucky annihilated. But we are told by honorable gentlemen that there was a circuit court established, consisting of these two States and another State, and that the judges of the district courts were appointed judges of the circuit courts, and accepted their commissions as such, and therefore they say that they did not destroy the office of the district judges of Tennessee and Kentucky. He asked if each other State had not district courts; he asked if there had not been circuit courts established in all the States by that law, and if the district courts of the other States had not been continued; and can it be said that a district court composed of a single State, as in the case of Tennessee and Kentucky, is not abolished, and the office of a district judge destroyed, because in the same law a circuit court is established, and the district judges appointed circuit judges? Can it be said in fact that it is the same office, when the duties are extended to three States, to sit in three places, as it was when limited to one State and one place; or will gentlemen tell us that if the judges of the district courts had refused to act as

judges of the circuit courts, whether they would have been still judges of the district courts after they had been abolished? Or will they say that the commission of a district judge limiting his jurisdiction to a State is the same as that of a circuit judge extending it over three States? And whether the law authorizing the commission over three States ought not to precede the commission vesting that authority?

Mr. W. asked if Congress, when exercising their authority in the first instance to establish inferior courts, had not the right to limit their continuance to any period, and that at the end of that period, if the law was not continued, what would be the situation of the judge appointed under the law, would his authority continue? Certainly not. And will any gentleman contend on this floor, that if a former Congress had a right to give limitation to the continuance of a law that the present Congress have not the same authority to limit or to discontinue? Honorable gentlemen, however ingenious, will find themselves, he presumed, unable to solve these difficulties, or to reconcile these inconsistencies; for his part, the authority by which this subject had been brought before them, the recommendation of the President, had been powerful. The letter and spirit of the Constitution, when recurred to, had established him in that opinion, that they were justified in the measure now proposed, and the practice of Congress in abolishing the district courts of Tennessee and Kentucky, satisfied him that it was no new idea—no new exercise of power; and further, that nothing in the form of a Constitution can be drawn so guardedly that gentlemen may not be found to differ on its true construction, and even, as in the present case, at different times and on different occasions, differ themselves in the construction of the same instrument. If all these considerations were not sufficient to satisfy gentlemen, and we were obliged to recur to the principles on which this instrument must have been established, we shall find that we do not in any degree violate them by the construction we put on them. If the British Government is recurred to, from whence the State Governments borrowed their principles, or if the State Constitutions are resorted to, we shall find thoroughly incorporated the principles for which we contend, that the judges are independent only of the Executive, but never above the law giving them their political existence. He admitted, with the gentleman from New York, that judges ought to be the guardians of the Constitution, so far as questions were constitutionally submitted to them; but he held the Legislative, Executive, and Judiciary, each severally the guardians of the Constitution, so far as they were called on in their several departments to act; and he had not supposed the judges were intended to decide questions not judicially submitted to them, or to lead the public mind in Legislative or Executive questions; and he confessed he had greater confidence in the security of his liberty in the trial by jury, which had in all times been considered as the palladium of liberty, than in the decision of judges who had at some time

been corrupt. For his part, he did not wish to break down the judiciary or the judges, or to violate the Constitution, though he confessed he should feel as secure in the decision of the State judges in even federal questions, with an appeal to the Supreme Federal Court, as in the present judges; and indeed the Constitution, in the fourth article, second section, which imposes on all State judges the oath to observe the Constitution and laws of the United States, always seemed to him to consider the State courts in a certain degree judges of federal questions. Nor had he ever been able to raise a doubt in his own mind as to the propriety of trusting State judges to decide federal questions, with an appeal to a federal court, when he considered that State juries had always been trusted to decide all questions, from whose decision there was no appeal; and indeed the State courts at all times had been the only judicial guardians of our rights, whose integrity had never been impeached. The gentleman from New York is so careful of the Constitution, that he wished it secured by walls of brass. Does he apprehend others wish to violate it, and himself its exclusive guardian, and that other gentlemen do not hold themselves equally bound to protect it, or have nothing worth protecting? For his part he had sworn to support it, and never should intentionally violate it; but he believed that no human invention could make it more secure than it was, deposited in that hallowed temple, and locked by the key of our holy religion.

MONDAY, January 18.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed. And, on motion of Mr. DAYTON,

Ordered, That the further consideration thereof be postponed until to-morrow.

The letter laid before the Senate on the 8th instant, signed Thomas Tingey and others, the vestry of Washington parish, was considered.

Resolved, That the President of the Senate, for the time being, be requested to make such order respecting the said letter as he may think proper.

TUESDAY, January 19.

A message from the House of Representatives informed the Senate that the House insist on their disagreement to the fourth, sixth, and seventh, amendments of the Senate, to the bill concerning the library for the use of both Houses of Congress; they agree to the conference desired by the Senate on the subject-matter of the said amendments, and have appointed managers on their part.

JUDICIARY BILL.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient

JANUARY, 1802.

Judiciary System.

SENATE.

nient organization of the Courts of the United States," ought to be repealed.

Mr. WHITE, of Delaware.—I shall be believed, sir, when I assure you, that nothing short of the highest sense of duty, and the great responsibility of the seat I have the honor to hold, could enable me to overcome the extreme embarrassment I feel in rising to present my sentiments to the Senate on this the most important question ever before them. I presume not to think, after the superior eloquence and talents that have been here displayed, it will be in my power to cast on the subject a single additional ray of light. Already, sir, has it been exhausted, and were I to consult my own feelings only; I should not now have to trespass upon your patience, whilst in the execution of a sacred duty, I pass hastily over part of the same ground that has before been trod by some of my honorable friends, making such additional remarks as might have escaped them. In the course of my observations, I shall confine myself to the same division of the question pursued by the honorable mover, and which it naturally presents.

1. As to the expediency. 2. As to the constitutionality of the measure proposed in the resolution.

That some system of courts is necessary in our country for the execution of laws and the administration of justice, gentlemen most hostile to the present establishment will readily admit. It is acknowledged, too, on the other side of the House, that the expenses of the present judiciary are unworthy of your consideration; that it is one of the least evils attending it; but, say gentlemen, it is upon too large a scale, it is useless, it is dangerous.

Sir, upon the original plan of the courts, it was found impossible that the six presiding judges traversing this extensive country, and holding their sessions in every State, could either do justice to the business, or at their advanced periods of life, withstand the fatigue of such severe and constant exercise; some alteration, some amendment of the system was found indispensable; the interest of the country demanded it of those in office, and it is for the execution of this duty that their political memories are now so illiberally reviled. It is well known, sir, that the United States are increasing in population, commerce, and wealth, beyond any former example; that new subjects of litigation are every day finding their way into your courts, and short-sighted indeed would have been the founders of the establishment now under consideration had they confined their views to the present time. Previous to the passing of this law, no man who could avoid it would commit his business to your courts, their arrangement amounted almost to a denial of justice; suitors preferred taking their chance in the State courts to the delay and expense attendant upon the proceedings in those of the United States. The constant change of presiding judges at every succeeding court, totally unacquainted with what had been done by their predecessors, and introducing new rules of practice, together with the unavoidable shortness of the terms, hung up the

business to the great inconvenience and injury of many suitors, and must in a short time have rendered that system not only useless, but even a nuisance to the country; people could not be expected to apply for justice to a bench where time was not given to administer it.

These, sir, among many others, are some of the reasons why business had not been originated in your courts antecedent to the present law. These are the reasons, sir, why their dockets are now so low; and permit me say, that the extracts contained in this document, even supposing them correct, which happens to be far from the fact, prove nothing; they were taken at a time when the present courts had scarcely commenced their operations, immediately after the first circuit, when no gentleman will undertake to say, there had been any thing like an opportunity at a fair experiment of them. And now, sir, before the people of the country have even become acquainted with the system, and before any man, unless by the power of inspiration, can judge of its utility, it is in a moment to be dashed to pieces. Why, I ask, sir, this precipitance? Do gentlemen fear that if the measure is delayed until another session the experiment might render the system popular? And these hateful judges—for there is the rub, sir—these hateful judges will not be so safely got rid of. I hope gentlemen, at least for the present, will quiet their fears; they need not, I can assure them, apprehend any immediate danger from this mighty army of judicial veterans, so terrible in sound; they are now, I believe, sir, in Winter quarters, and even if continued in service another year, could not totally ruin and enslave the country; or, as has been indeed very feelingly expressed by the honorable gentleman from Georgia, on my right, (Mr. JACKSON,) lay our virtuous citizens in irons. The honorable gentleman from the same State, on my left, (Mr. BALDWIN,) has been pleased to tell us, that the same justice was not to be expected from the courts of the United States, as from those of the individual States, because the judges of the former cannot have a sufficient knowledge of the usages and customs of the country, and their jurors not being of the vicinage, can know nothing of the parties or their suits. I admired much, sir, the ingenuity and candor of that gentleman, but this was certainly among the least solid parts of his argument; unhappily the very reasons he adduced, proved directly the opposite of what he wished. Judges, sir, should be governed only by the law of the land; they carry it with them; they are its expositors, and are sworn to decide according to it; and have nothing to do with the usages and customs of the neighborhoods where they may happen to sit. And I have always understood that the greatest possible security for the impartiality of jurors is their being entire strangers to the contending parties, and totally ignorant of their causes, until empannelled to decide them; they then view nothing but the naked facts arising out of competent testimony, and are influenced only by law and justice. And such, sir, is the frailty of our nature, that the best man in society may be acting under

the influence of politics, friendship, passion, or prejudice, when he supposes himself governed by the purest motives. Well aware though, as I am, sir, that nothing short of the Constitution itself, and I fear that not even that will be sufficient to preserve the independence of the judiciary from this bold onset, I shall now proceed to the second division of the question.

I admit, sir, that the law proposed in the resolution to be repealed, is capable of much amendment, and it has never been denied but that Congress had the power of altering it in any way, so as not to impair the independence of the judiciary, by touching the offices or salaries of the judges; this cannot be done, the words of the Constitution on the subject are as explicit and certain as language can be. By the first section of the third article it is declared, that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." Does our language admit of words more positive than these, sir? Not a letter, nor even a comma, is wanting to complete the meaning we assign to them; and I ask gentlemen to point out any other words that the framers of this instrument could have used, that would have been less equivocal, or that could import with more certainty the construction we now contend for; it has not yet been done, and I defy them to do it; and if a different construction can be given to these words, this written Constitution is not worth a sous; it is to all useful purposes a mere *carte-blanc* upon which a Legislative majority may write what they please.

In a preceding part of this Constitution, power is given to Congress to constitute tribunals inferior to the Supreme Court; by the act to which the resolution on your table refers, they did so, and in pursuance of that act, the President of the United States issued commissions to certain gentlemen as judges, they accepted of those commissions, and at the moment of their becoming judges, the Constitution attached to their offices, and guaranteed to them, the same independence and permanency as judges of the Supreme Court, for it makes no distinction. "Judges both of the supreme and inferior courts shall hold their offices during good behaviour." On the acceptance of their commissions, a complete contract was formed between them and the Government; the Constitution told them that the tenure of their offices should be their own good behaviour; the law told them that, for their services, they should receive a certain sum annually; these were the terms, sir, that tempted them to leave their other pursuits in life, and carry into execution this contract; and it is a contract that no power on earth can dissolve but by first altering this Constitution in the manner it directs, or by violating it; and any law attempting its dissolution, operates retrospectively, is an *ex post facto* law, and in that respect, too, unconstitutional.

But, sir, in order to place beyond a question

forever the entire independence of the judiciary, the Convention went still further, and in this same section, nay, in this same sentence, for they followed the thing closely up, they declared that these judges, viz., of the supreme and inferior courts "shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." And under the words of this Constitution, we have just the same power to diminish their salaries whilst they continue in office, as we have to remove them from their offices and strip them of all salary; they hold their offices during good behaviour, and the full amount of their salaries whilst in office by the same strength and power of language; for can it be said, sir, that the words "shall not" are more prohibitory than the word "shall" is mandatory? Certainly not. These latter words apply especially to Congress; they must have been introduced for the express purpose of fixing and marking the bounds of Legislative authority towards the judiciary. And it would seem as if the wise framers of this instrument had feared not, sir, that Congress would ever presume themselves authorized absolutely to remove any judges from their offices without cause, as is contemplated in that resolution, for such an idea could never have entered their minds, after they had the moment before expressly declared, in so many words, that the judges, both of the supreme and inferior courts, should hold their offices during good behaviour, but that the aspiring pride and ambition of Legislative power, in some unhappy moment of intemperance or party warmth, might attempt to impair the independence of the judiciary in another way, by assuming a discretionary power over the salaries of the judges, and thus, rendering them dependent upon Legislative pleasure for a precarious support, make them servile and corrupt.

Gentlemen acknowledge that the judges of the Supreme Court are out of their reach, (thank Heaven that they happen to think so, or they, too, would accompany their brethren;) but, say they, the judges of the inferior courts are creatures of our own, and we can do with them as we please. Let me admit, sir, for argument sake, the positive meaning of the Constitution to the contrary notwithstanding, that these words, "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour," are equivocal. What reasons can gentlemen have to believe, upon what possible grounds can they presume, that the makers of this Constitution did not intend to place the judges of the inferior courts upon the same independent footing as those of the superior courts? Do they not belong to the same great department of your Government; intended to be kept separate and distinct from the other two great departments? Is not their independence equally important to the faithful administration of justice? Certainly, sir, and if possible more so, for it is to them the people, in most instances, must first apply for justice, and a vast proportion of the most important business that passes through their hands, is never carried into the Supreme Court.

JANUARY, 1802.

Judiciary System.

SENATE.

As to the outcry that has been raised about sixteen hundred, or sixteen thousand, or sixteen millions of judges, if gentlemen please—calculating on the abuse of power by the constituted authorities in the use of it, the honorable gentleman from Connecticut has so fully and unanswerably replied to it, that I shall make no observations on the subject.

The gentleman from Georgia, on my right, has told us that the Constitution cannot be altered in any other way than by two-thirds of Congress agreeing to it, and then very emphatically asked, will two-thirds now agree? I hope not, sir; but because a sufficient number of us cannot agree upon altering it Constitutionally, will gentlemen force their way through it by violence, in order to get at these judges? The same honorable gentleman has been pleased to compare this system and these judges to a cotton machine; when done, if it should not work to suit the maker, he tears it all to pieces and makes a new one. Are we at liberty to infer from this, sir, that the present judges cannot be made to work to suit the present rulers, and that this system is to be demolished to displace them, in order to make a new one, and seat upon your benches of justice creatures more pliable? I hope not, sir; I am sure such cannot be the views of any honorable gentleman.

It has been day after day echoed and re-echoed from one side of the Chamber to the other, that this law was one of the last expiring acts of the former Administration; that the Legislature had no right to pass it, because they knew it would be repealed. What, sir, are we told that a majority of the last Congress had no right to pass a Constitutional law? This is novel doctrine, indeed; and were they to omit doing good because they had reason to believe their successors would do evil? I acknowledge, sir, that the establishment of this Judiciary system was one of the last acts of the former Administration, and it was the very best act; the destruction of it is likely to be one of the first acts of the present Administration, and I pray God that it may be the worst; but from such a beginning the end is indeed incalculable.

Sir, these judges may, by the strong arm of legislative power, be driven from their seats; not their own unimpeachable integrity, their virtue, and their learning, or even the sacred barriers of the Constitution itself may be sufficient to avert their fate; but remember, though advanced in years, many of them will live to see what the gentleman from Maryland has called the efflux of passion and reflux of reason—they will live to see the people of this country review with horror the present attempt; and, if till then they should happily preserve their peace and liberties, wonder how it has happened.

I will now, sir, in conclusion, notice, in a style that it deserves, the language of the gentleman from Virginia, in the discussion of this question, applied to the State of Delaware—language unworthy of this floor. He tortured an expression of my honorable friend from New York to furnish himself with an opportunity of travelling far out of the subject, in order to insult the honor of the

State I belong to. After speaking of the suability of States, he observed that he should feel the same interest for any State, large or small, whether it were the little State of Delaware herself, or the still more insignificant Republic of St. Marino." The speech is not yet in print, but if I am wrong the gentleman will correct me. [Mr. MASON explained: he did not mean by what he said anything derogatory to the State of Delaware; on the contrary, he entertained a high respect for that State.] Mr. WHITE.—I hope, Mr. President, I may be further indulged; I did not at the moment distinctly hear what the gentleman said, but now must insist on knowing explicitly from him, not only what he meant, but whether he believes the word "insignificant," as used by him, could in any way apply to the State of Delaware? [Mr. MASON was about to explain further, when the VICE PRESIDENT rose from his seat and observed, that he was not in the Senate when the gentleman from Virginia spoke, but if he had used any such words as were charged to him, they were improper, and ought not to have been permitted. That no reflections on any State or gentleman should be suffered in the Senate, and he hoped the gentleman from Delaware would take no further notice of it.] Mr. WHITE.—As the gentleman is now pleased to deny his intention, in obedience to the Chair, I shall spare myself the trouble and his feelings the pain of a retort that very readily presents itself.

Mr. CHIPMAN, of Vermont.—Mr. President, after the length of time which has already been consumed, and the abilities which have been displayed in this debate, I can have but little hope of exhibiting anything new for the consideration of the Senate. Yet, momentous as I consider the decision to be made on the present question, involving consequences powerfully affecting the most important principles of the Constitution, I cannot persuade myself to give a merely silent vote on the occasion. In the observations which I intend to make, I shall endeavor, briefly, to examine some of the principal arguments only, which have been offered in favor of the resolution on your table.

The arguments in support of the resolution have been reduced under two general heads:

1. The expediency of repealing the law contemplated in the resolution, and
2. The Constitutional power of Congress to repeal that law.

To evince the expediency of the measure, it has been said that the system of 1793 was adequate to all the purposes of the National Judiciary; and that the judges appointed under that system were competent to all the Judicial duties required. Upon this, sir, I shall briefly observe, that from the number of terms of the supreme and circuit courts, and the immense distance to be travelled, the labor was unreasonably great. From the labors and fatigues of riding the circuit, there could not be allowed time sufficient for those studies, and for that calm and deliberate attention which is so necessary to a proper discharge of the duties of a judge.

At times, it has happened that a supreme judge could not attend a circuit court; from this circumstance, the court in the district to which I have the honor to belong, has more than once failed to be holden. At other times, the arrival of the judges has been so late that the proper business of the term could not be completed. These failures occasioned very great delay, expense, and vexation to the suitors; and we know that the same or greater failures and delays have unhappily been experienced in other parts of the United States—failures and delays which I cannot attribute to any criminal negligence of the judges, but to the burdensome duties imposed by that system, and the infirmities and accidents to which men must ever be exposed, in the performance of labors so arduous and extensive.

To prove that judges of the Supreme Court must have been competent to all the duties of that and the circuit courts, the honorable gentleman who brought forward the resolution drew a comparison from the courts and judges in England. He has told us that in England there are but twelve judges and three principal courts; that these courts embrace, in their original or appellate jurisdiction almost the whole circle of human concerns; that the two courts of King's Bench and Common Pleas, consisting each of four judges, entertain all the common law suits of forty shillings and upwards, arising among nine millions of the most commercial people in the world; and that they have, moreover, the revision of the proceedings of the subordinate courts in the Kingdom, down to the courts of *pie-poudre*; and that from long experience these courts have been found fully competent to all the business of the Kingdom. This statement, sir, is by no means correct. In England, the House of Lords is the supreme court of appeals in the last resort, in causes both in law and in equity. Instead of three, there are four superior courts. The court of Chancery, in which are decided all suits and matters in equity, including a very numerous and important class of causes. The courts of King's Bench, Common Pleas, and Exchequer, all of which have original jurisdiction in civil causes; and the King's Bench, besides being the highest court of criminal jurisdiction, has also the correction and revision of the proceedings of all the subordinate courts, by writ of error or otherwise. The subordinate courts, which were barely mentioned, are very numerous. There are in England, exclusive of Wales, more than forty counties, all of which have their separate courts and judges. Some of the counties are regular franchises. Lancaster, Chester, and Durham, have their separate courts, both of law and equity, which claim cognizance of causes and parties within their respective jurisdictions, even against the courts at Westminster. There are also an immense number of cities and towns corporate throughout the Kingdom; the courts and judges, of which, though more or less limited in their jurisdiction, entertain a vast variety of civil suits. There are, besides these, the high court of admiralty, which has an exclusive jurisdiction in maritime causes; the courts of the two universities,

the prerogative court of the Archbishop of Canterbury, the archiepiscopal court of York, the diocesan and other ecclesiastical courts, having also an extensive jurisdiction, of a civil nature, in causes testamentary, and those relating to the distribution of the goods of intestates.

Wales is a principality, and its courts have exclusive original jurisdiction within the territory. The great sessions is the highest court of the principality from which a writ of error lies in the Court of King's Bench. The subordinate courts and judges are equally numerous, in proportion to the territory and inhabitants, with that of England. I omit the courts of conscience and other inferior courts, and magistrates almost without number. From this view, though imperfect, it is evident that the comparison attempted by the honorable gentleman, is by no means favorable to his conclusion. The population of that country exceeds in number that of the United States by one third, perhaps more; but its whole extent, inclusive of Wales, though not comprehended in the *Nisi Prius* circuits, does not equal one of the circuits of the United States, under the system of 1793; and yet that country employs, it is believed, more courts and judges, not only than the Government of the United States, but than all the individual States taken in addition. I do not however conceive that any advantage is to be derived from the comparison, to the one side or the other. The situation of property and civil policy, numerous and complicated rights, introduced by ancient usages, and supported by laws and habits, and by interests public and private, may render a greater number of courts and judges, a more extensive judicial system, necessary in one country than in another: I think it ought to be laid wholly out of the question.

It has been said, sir, that a knowledge of the local laws, of the customs and manners of the several States, is necessary to the judges of the Supreme Courts, and cannot be dispensed with on appeals in causes arising in different parts of the Union, and that the judges can acquire this knowledge in no way but by attending the circuit courts in the several States. But let me observe, sir, that the laws of the several States, which vary from the common law, are to be found in their statute books, in the decisions of their courts and their rules, of practice; for no custom can as such become a law, until it shall have been adopted by usages and established by judicial decisions. All these may be made to appear on an appeal, either on the face of the records in the pleadings, or in the special verdict, or by proper exemplification, and will afford the court in such case a more correct knowledge than the recollection of a judge, of what he has caught in the hurry and fatigue of the circuit.

A further objection has been urged against the continuance of the present judicial system, from the additional number of judges which it has introduced, which it is said may prove dangerous to the liberties of the country. An honorable gentleman from Georgia (Mr. JACKSON) cited the opinion of an author who has written on the British constitution, that the greatest political evil which could befall the country, was the existence of large

JANUARY, 1802.

Judiciary System.

SENATE.

judiciary bodies, and who had illustrated his ideas on that subject by instancing the Parliaments of France. This observation does not, neither was it meant by the author, to apply to any particular number of courts in due subordination, each consisting of a small and limited number of judges and employed solely in proper judicial business. But it applies with force to courts composed of numerous members and forming large bodies, who, in addition to their proper judicial functions, are permitted to assume an authority in the political concerns of the nation. Such were the Parliaments of France, the late judicial courts of that country; particularly the Parliament of Paris. The members of this body were very numerous, and as it was necessary that all royal edicts, before they were to be considered as laws, should be registered in that court, they claimed the right of deliberating and deciding on the registration of any edict offered by royal authority, and consequently of permitting or refusing it the sanction of a law. With this claim that body certainly became dangerous to the existing Government, and the contest which ensued between them and the King on this subject, had no doubt a powerful effect in precipitating the late revolution in that country. But there is nothing in all this which can be applied to the courts of the United States. Let me observe, sir, that there has always appeared to me, in the system of 1793, which is sought to be restored, a very great and manifest impropriety. The circuit courts were in that system, though subordinate, in some measure blended with the Supreme Court, one or more of the judges of the Supreme Court being always judges of the circuit courts. This rendered the Supreme Court a fluctuating body, some of the judges of the Supreme Court being always excluded in the decision of causes coming by appeal from the different parts of the United States. And when two supreme judges held the circuit courts of the four remaining judges, who were to decide on an appeal, three might reverse a judgment against the opinion of the fourth, and the opinion of the two judges in the circuit court, unless those judges, from whose judgment the appeal was made, gave also their opinions in favor of an affirmance, and which they might do, their exclusion being indeed only voluntary, from a high and just sense of propriety. This has always appeared to me, to say no more, a very glaring impropriety in that system. The circuit courts under that system have indeed been compared to the *Nisi Prius* courts in England, but the slightest attention will convince any one that they do not compare. The circuit courts in our system are courts of original and distinct jurisdiction; not so the courts of *Nisi Prius* in England; they are considered as a branch of the superior courts, at Westminster, and are held by a commission of assize usually issued to a judge of one of the superior courts, and an associate for each of the six circuits into which England is for that purpose divided. When a cause in any of the superior courts is by the pleadings put on an issue of fact, it is with the record sent to be tried at *Nisi Prius* by a jury of the proper county; instead of calling up a jury to try it at the bar in

Westminster Hall. After the trial at *Nisi Prius*, the verdict with the record is remitted to the court, out of which it was sent, and there the opinion of the *Nisi Prius* judge and the conduct of the jury are examined, and considered as matters passing in the same court. Here then the comparison wholly fails: there is no similarity between the two systems, except that of a judge riding the circuit.

Here, sir, I shall waive any further observations on this part of the subject, and come to the great question which it is necessary to decide. Have Congress the Constitutional power to repeal the law as contemplated by the honorable mover of this resolution? To abolish the courts established by that law, put down the judges, and abolish their salaries? It is true, as was observed by the honorable gentleman from Georgia, (Mr. BALDWIN) that the resolution does not necessarily involve that question, because the repealing act, if the resolution should be adopted, may be so modified as to avoid any difficulty on the great point. But as the honorable mover avowed his intention to be an abolition of the courts, the offices of the judges and their salaries, and as the principal arguments have in the course of this debate been directed by that view of this subject, I shall be permitted to consider it on that ground.

One source of argument in favor of the measure proposed, has been derived from the powers considered as incident to every legislative body. It is said that a power to repeal all its legislative acts is inseparably incident to every sovereign Legislature—that the act, the repeal of which is contemplated, is a legislative act of Congress, therefore Congress necessarily have the power to repeal it—that to admit the contrary, is to say that the power of Congress at one time is not equal to its power at another time—that a subsequent may be bound by the acts of a former Congress, contrary to a very important maxim in legislation—in a word, that it is to make the creature greater than the creator, as it denies to Congress the power over its own acts, which it has passed, and will in course put a stop to all amendments, all improvements of our laws. This doctrine, here meant to be asserted, is not in the full extent applicable to the legislative powers under our Constitution. There are acts which Congress are by that instrument expressly denied the power of passing—there are acts which, whenever passed, Congress cannot repeal, or rather the effects of which they cannot even suspend, much less can they destroy. They are expressly denied the power of passing *ex post facto* laws; and this applies no less forcibly to a repealing act than to any other act—it is by its operation that the nature of the act is in this case determined. Every act which in its operation attempts to divest any right previously acquired, whether by a former act of legislation, or by any other lawful means of acquisition, is in name, nature, and essence, *ex post facto*.

Indeed, sir, I apprehend that some gentlemen have been led into a mistake on this subject, by an incautious admission of maxims and theories of legislative powers in another Government; but which do not apply to our Government, as insti-

SENATE.

Judiciary System.

JANUARY, 1802.

tuted and limited by our Constitution. There are, sir, in every nation two kinds of legislative powers. The one is original and extraordinary; and may be called the power of political legislation. It is by an associating nation employed in forming and organizing the Government, in disposing its powers and defining or limiting their exercise. The other is derivative, the ordinary power of legislation, and is employed in the civil regulations of the community. In the first consists the political sovereignty of the nation. This power is transcendent. It is paramount to all other powers in the nation. It can create powers, rights, and duties, and can abolish them at pleasure; not because what it does, is always wise or even just; but because no other power in the nation can have a right, or can be equal to control its operations. In Great Britain, from ancient usage, the consent of the nation witnessed, by long and general acquiescence, both the ordinary and extraordinary powers of legislation are considered to be vested in the Parliament of the nation. Acting in this capacity of political sovereign of the nation, the British Parliament can create rights, and can destroy existing rights, at will; although in exercising such acts of power, they proceed with great caution, and are careful to indemnify individuals, whose rights they may have injured. In this capacity it can, as it has done, remodel the Government. It can fix and alter the duration of Parliaments, and change and limit the descent of the Crown. Indeed, vested with this power, in addition to the ordinary powers of legislation, the figure is hardly too bold, by which, when acting on subjects within the reach of its authority, it is said to be omnipotent. Not so the Congress of the United States; they possess not that transcendent power, that uncontrollable sovereignty of the nation; they possess the ordinary powers only of legislation; and these powers they derive under the Constitution of the United States: by this instrument their powers are instituted, limited and defined. This instrument is the act of the political sovereign, the People of the United States. To them it was proposed, and they, through their agents empowered for that purpose, enacted it the fundamental and supreme law of the National Government. They have said, as they had a right to say on this subject, Congress shall act; or that they may act at their discretion; here the Congressional power is limited, there is placed a barrier which shall not be passed. Congress, as I observed, possess not this paramount power; but in one mode, provided for altering and amending the Constitution, they are, under certain restrictions, permitted an inceptive power. They have a right to originate proposals of amendments, which, when ratified by three-fourths of the State Legislatures, to whom the national sovereignty is in this instance referred, are adopted into, and become a part of that instrument. In another mode, the State Legislatures have the power of inception; they also may originate proposals of amendments, which Congress must refer to a convention of the people for their ultimate acceptance and ratification. In this instance alone, have the people of this coun-

try reserved to themselves a portion of the national sovereignty, in the exercise of which is only found that voice of the people, which, because it is not to be resisted, is sometimes called the voice of God. This, sir, is the authority of that supreme law under which we act, the Constitution of the United States; an authority indispensably binding. We have no right, when we wish to carry a favorite measure, to which we find some barrier opposed by the Constitution, to prostrate or to overleap that barrier. We have no right to say that the national sovereign, could it now be consulted, would dispense with the limitation, would remove the barrier, which, in our present opinion, stands opposed to the public good. No, sir, we may not approach this ground. It is dangerous; it is an usurpation of the national sovereignty. We are but agents of the nation, acting under a limited authority. All our acts which exceed that authority are void.

These are the principles to be applied in the investigation of Constitutional powers. Let us then examine the Constitution upon these principles, and fairly determine whether we are permitted the power for which it has been contended, the Constitutional power to remove a judge, by abolishing the office, and consequently to deprive him of his salary? The first provision which we find in the Constitution relating to the judicial department, is in the second section, where, among other powers enumerated, it is declared that Congress shall have power "to establish tribunals inferior to the Supreme Court." Upon this it was observed, by the honorable gentleman from Georgia, (Mr. Jackson,) that this being a grant to Congress of a legislative power to establish inferior courts, necessarily includes the incidental power to repeal; that this being a first grant, cannot be restrained nor taken away by any subsequent provision in the Constitution upon the same subject; that we are to take the rule of construction, that the first grant, and the first word of a grantor in a deed, shall prevail over a subsequent grant, or subsequent words of a different import. Are we, indeed, sir, to apply in the construction of the Constitution, the law, the supreme law of the nation, the rules devised for the construction of a deed, a grant, by which a few paltry acres are transferred from one individual to another? No, sir, very different are the rules of construction; the first act of the grantor, but the last act of the Legislature, shall prevail; or where, in any case, is the power to repeal? Another rule, more universally applicable, is, that you shall so construe a law that every part of it, if possible, may stand together, that every part may have its operation. Thus, if there be a general provision in the former part of a law, and there follow a particular provision, which cannot take effect unless some part of the former provision be set aside, the latter shall be considered as a limitation of the former, and which shall be carried into effect so far only as it is not incompatible with the latter.

In the third section of the Constitution is a further provision: "That the judicial power of the United States shall be vested in one Supreme

JANUARY, 1802.

Judiciary System.

SENATE.

“Court, and in such inferior courts as the Congress may, from time to time, ordain and appoint.” The highest judicial authority shall not be divided into two courts. It shall, to use a ruder phrase, be one and indivisible. I consider it as imperative on Congress to establish, not only a Supreme Court, but also to establish some courts of inferior jurisdiction, which may be modified and extended from time to time, as experience and future expedience shall dictate, so that it be without violence to any part of the Constitution. The words, “as Congress may, from time to time, ordain and appoint,” were introduced with intent so far to give a discretion on the subject. The power of erecting courts, is here taken for granted, as is contained in the clause before cited, from the second section, supplied by the general clause, by which it is declared, that “Congress shall have power to make all laws which shall be necessary and proper for carrying into effect all the powers vested by the Constitution in the Government of the United States, or in any officer, or department of the Government.” I cannot understand it; for how is it possible so to understand it, that the words, “may ordain and appoint,” in their connexion imply also to abolish? Certainly it is not a necessary implication. That Congress are required to make a provision of inferior courts; that the thing is not merely optional, is very clear from another part of this section, declaring to what class the judicial authority of the United States shall be extended. [Read that part of the section.] Here observe, the Supreme Court has original jurisdiction in the smaller number only of the cases specified; so that without a provision for the greater number, and the judicial authority, instead of being extended to all the cases enumerated, would in fact be limited to a few only. Let us now examine the provision relating to the judges, which is contained in the former part of this section—a provision intended to secure to the judges a proper degree of independence. It is declared, that “the judges both of the Supreme Court and inferior courts, shall hold their offices during good behaviour.” The judges of all the courts are placed on the same footing. The expression is not, that they shall continue in office, which might seem to be compulsory, but shall hold their offices, implying at their option, during good behaviour. For a judge may resign; he may accept a place incompatible with the office of judge, as he may, on election, accept the place of Senator or Representative in Congress, by which his office of judge would be vacated by his own act, implying a resignation. The force of the expression clearly is, that no judge, either of the supreme or inferior courts, so long as he continues to behave well, can be removed from the office, or the office removed from him by the act of any other. For the expression being general, with only one exception, in the nature of a proviso, that he continues to behave well, it is exclusive of every power either to remove the judge from the office, or, as has been ingeniously indeed suggested, of removing the office from the judge,

7th Con.—5

causing it to vanish from its hold on any other ground or pretence whatever. It is a well-known rule, that the expression of an exception in any provision, excludes every other exception by implication. Next it follows, “and shall (the judges shall) at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.” How long shall they continue to receive, or be entitled to receive, an undiminished compensation or salary? So long as they shall continue to hold their respective offices. And how long are they entitled to hold their offices? So long as they shall continue to behave well. That is, the duration of the time for which they shall be entitled to receive an undiminished salary, shall be equal to the duration of the time for which they are entitled to hold their offices, equal to the duration of the time in which they shall continue to behave well. What rarely happens in subjects of this nature, the position that the judges cannot, during good behaviour, without a direct violation of the Constitution, be deprived of holding their offices, or of receiving their salaries, is capable of the highest proof, not merely by a train of probable and metaphysical reasoning, but by the clearest and plainest mathematical demonstration. It is a comparison of quantities in the duration of time; or shall it now for the first time be said, that when one quantity, or one length of duration is equal to a second, and the second to a third, that nevertheless they are not equal each to the other? Have intuitive truths at length changed their nature? Are they in these times inverted to falsehoods? Have the clearest axioms of ancient science suffered a revolutionary subversion? No, sir, they remain the same; they are still capable of assisting us to the same infallible conclusions.

The gentleman from Kentucky has told us, that if the construction against which he contended had been contemplated by the framers of the Constitution, it would have been explicitly declared, that the judges shall hold their offices and salaries during good behaviour; fairly admitting, that a declaration thus explicit, would have been conclusive for the construction of his opponent. Surely it will not be contended, that the idiom of the English language is so inflexible, and its interpretation so precise, that identical positions to be equally clear and explicit, can be expressed by identical words and phrases only. Had the expression been, they should hold their offices and receive their salaries during good behaviour, would not the meaning have been the same and equally expressive? Indeed the word hold, though well applied to an office, is not very properly applied to taking the payment of a salary. Or had it been, “they shall hold their office during good behaviour, and while they continue in office, which is to be during good behaviour, they shall continue to receive their salaries, which shall not during that time be diminished,” it certainly would have been a declaration equally explicit with that suggested by the gentleman. And this it has been clearly and demonstrably proved, is the same as that which is expressed in the Constitution.

I will here, sir, though it might perhaps have been more properly done before, make a few observations on the independence of the judiciary. It has been said by some gentlemen, in effect, that though the judges ought to be independent of the Executive—though they ought not to hold their offices or salaries dependent on the will of the President, yet, in a Government like ours, there can be no reason why they should not, like the other departments of the Government, be dependent on public opinion, and on Congress, as properly representing that opinion. That if the judges are made thus independent; if Congress cannot remove them by abolishing their offices, or in any other way, except that of impeachment for misbehaviour, they will become a dangerous body in the State; they may, by their discussions on the constitutionality of a law, obstruct the most important measures of Government for the public good.

Unfortunately for the argument, this doctrine agrees neither with the nature of our Government, which is not vested with the unlimited national sovereignty, but from that derives its powers, nor with the positive and solemn declaration of the Constitution. That Constitution is a system of powers, limitations, and checks. The Legislative power is there limited, with even more guarded caution than the Executive; because not capable of a check by impeachment, and because it was apprehended, that left unlimited and uncontrolled, it might be extended to dangerous encroachments on the remaining State powers. But to what purpose are the powers of Congress limited by that instrument? To what purpose is it declared to be the supreme law of the land, and as such, binding on the courts of the United States, and of the several States, if it may not be applied to the derivative laws to test their constitutionality? Shall it be only called in to enforce obedience to the laws of Congress, in opposition to the acts of the several States, and even to their rightful powers! Such cannot have been the intention. But, sir, it will be in vain long to expect from the judges, the firmness and integrity to oppose a Constitutional decision to a law, either of the national Legislature, or to a law of any of the powerful States, unless it should interfere with a law of Congress; if such a decision is to be made at the risk of office and salary, of public character, and the means of subsistence. And such will be the situation of your judges, if Congress can, by law, or in any other way, except by way of impeachment, deprive them of their offices and salaries on any pretence whatever. For it will be remembered, that the legislative powers of the several States, as well as those of Congress, are limited by the Constitution. For instance, they are prohibited, as well as Congress, to pass any bill of attainder or *ex post facto* law. The decisions of the judges upon such laws, and such decisions they have already been called upon to make, may raise against them, even in Congress, the influence of the most powerful States in the Union. In such a situation of the judges, the Constitutional limitation on the Legislative pow-

ers, can be but a dead letter. Better would it be they were even expunged.

Thus, sir, it appears, that the independence of the judges, even of Congress in their Legislative capacity, is agreeable to the nature of our Government, to the whole tenor as well as the express letter of the Constitution. But, sir, at this late stage of the debate I will not farther enlarge; I will only add, that upon these principles, and with these views of the subject, I shall give a hearty negative to the resolution on your table.

MR. WELLS, of Delaware.—I know not what apology I shall make for rising at this late period of the debate, unless I find it in the importance of the subject under discussion. Coming, as I do, from one of the smaller States, all of whom, from their peculiar situation, feel perhaps more than a common interest with their sister States in the preservation of this Constitution, I could not be indifferent to the progress of the present question. To a State circumstanced like that to which I have the honor to belong, the Constitution of the United States is the charter of her rights and the palladium of her liberties. I must, therefore, be forever induced by sentiments of attachment as well as duty to resist a measure calculated to subvert that Constitution. Such, I believe, is the tendency of the resolution on your table. When I say so, I do not mean to impute any unworthy motive to the gentleman who moved the resolution, or to those who have supported him. Assured I am, that those gentlemen regard this business in a very different light from what we do, or they would not have brought it forward. Believing that the law in question is a bad one, and may be constitutionally repealed, it was their duty to endeavor to effect its repeal.

Permit me now, sir, to glance in as cursory a manner as possible, that I may take up no more of your time than need be, at some of the reasons which have been assigned by the friends of this resolution. We have been told that the law proposed to be repealed, is unnecessarily expensive. That it is not calculated to promote the proper objects of a judiciary, and may be constitutionally repealed. That the old system, which this has superseded, was sufficient for the due administration of justice, and therefore it is expedient to revive it.

It is true, sir, that the retrenchment of expenses has been recommended to us by the President. It was his duty to do so. It is what the people had a right to expect from us as well as him. And these expectations, I trust, would not have been disappointed, even if our attention to it had not been invited by the Executive. We are placed now in a very different situation from what we have been for several years. The war in Europe is over. A war, permit me to say, more dreadful than any we read of. It has raged like a tremendous tempest, bearing down almost everything before it. It was not to have been expected that this our nation, towering like the majestic oak, should have escaped its fury, yet it has left us standing—the pride of the forest, and the only one to which it has not done some cruel mischief. But

JANUARY, 1802.

Judiciary System.

SENATE.

the storm is passed by; the danger is over, and many expensive establishments may now be reduced which could not before have been relaxed. It may now be economy to save, what it would have then been ruin not to have expended. But is the Judiciary of a nature to be reduced to what is called a peace establishment? From the manner in which gentlemen have talked of the expense of this department, it would seem that the sum to be saved by the measure now contemplated, was one hundred and thirty-seven thousand dollars, whereas the real amount is only about thirty thousand dollars. It is true, sir, this sum itself, were it even less, would be too much to squander away. But when you consider, that if you revive the former law, you must unavoidably increase the number of the judges of the Supreme Court, the difference of expense between the two systems will, probably, be about twelve or fifteen thousand dollars. And for this sum, amounting, among the people, to less than one third of a cent per man, will gentlemen persist in a measure calculated, in the opinion of almost half of the members of this body, to subvert your Constitution? Is this the economy which our constituents require from us? Do they wish us, like rash and greedy gamblers, to risk their *all* upon one single cast of the die? If the gentlemen are right, we save about twelve or fifteen thousand dollars. If they are mistaken in their opinions, we lose our Constitution. Is there any possible comparison between the advantage and the risk? But for argument sake be it admitted, that the danger on either hand is equal. Let us then examine the claims of each opinion to preference.

By the former law, which it is now proposed to repeal, there were six judges of the Supreme Court appointed in the United States. In each State was placed one district judge. For each State there was held a circuit court twice a year: this was composed of one or more of the judges of the Supreme Court and the district judge. The district judge in each State held a court of his own four times a year. The judges of the Supreme Court, besides holding these circuit courts, were twice a year to hold a Supreme Court at the seat of Government. One objection, in my mind, to the old system, was the duties of the inferior and superior judges being blended together and not sufficiently separated. Thus the judge of the district court was called to go up and associate himself with the judge of the Supreme Court; who was obliged to come down from the highest court to hold a circuit court. Your judges were like a Proteus; constantly changing their character. Each set of judges, in my opinion, ought to have their appropriate sphere, and should never be suffered to move out of it. Another objection is not without its weight. The same judges did not always attend the same circuit court; and, according to the gentleman from Georgia, (Mr. BALDWIN,) this change is necessary, in order that the judges may in turn become, all of them, acquainted with the municipal laws and customs of the different States. What was the consequence? A judge, after attending a circuit court, and hearing

a learned argument, was obliged sometimes to postpone his determination to the next term. When that arrived, a judge of the Supreme Court attended; but not being the same that attended before, a new argument became necessary. This, sir, may have been delightful sport for the gentlemen of the bar: the poor clients must have felt far differently. But the strongest objection to the system was the impossibility of the judges discharging the duty required of them. These six judges were to attend, among them, eight and thirty courts in one year. Considering the immense extent of country over which these courts were spread, and making due allowances for the many causes which would probably always prevent two or more of the judges from attending the circuits, each judge would have to attend twelve courts in a year. If this system is to prevail, you must select your judges as you enlist soldiers. Instead of inquiring for lawyers of integrity and talents, you must look out for able-bodied men; for such as are best fitted to stand the fatigue of constant travelling, and least liable to be affected by the inclemencies of weather. It is impossible, if gentlemen will reflect, that they can believe it expedient to revive a system so liable to objections, so impossible to be executed.

Let us now for a moment examine the law which is proposed to be repealed. It classes the United States into six circuits. In each of the States comprising a circuit, there is a circuit judge. In each circuit there is a court composed of the circuit judges, living within that circuit. The judges of the Supreme Court hold their sessions at the seat of Government twice a year. There is an appeal from the district court of each State, to the court of the circuit within which that State is classed. From the determination of the circuit court there is a final appeal to the Supreme Court. The same judges are not here, as under the former law, judges of the superior and inferior courts. Each has his proper station. No judge will here have to act upon an appeal from his own decision. In the one there is order and symmetry; in the other naught but confusion.

But it would seem in vain to reason upon the relative value of the two systems; for gentlemen think that they have discovered, by arithmetical calculations, that the late law was unnecessary. They endeavor to prove that the suits were decreasing in number at the time the additional judges were appointed. The document they rely upon for this purpose, is a return made from the clerks of the different circuit courts, showing the annual number of suits brought in each court since the year 1790. This return is not only inaccurate, but furnishes directly the reverse conclusions from those which have been drawn from it. I say it is inaccurate, because the return from the court of Maryland is entirely omitted, and the aggregates of the suits in the States of Tennessee and Kentucky are only given. It is incorrect in another respect. On the returns from the States of Massachusetts, and Virginia, it is stated that the *suits depending* are not included in those columns which show the number of suits annually instituted. This document, therefore, is too glaringly

SENATE.

Judiciary System.

JANUARY, 1802.

incorrect to be relied upon for establishing any conclusion which ought to guide us in business of this importance. But let us take it as we find it, and see if the calculations of the gentleman from Kentucky (Mr. BRECKENRIDGE) are more to be relied upon than the document itself. The gentleman says that in 1799 there were twelve hundred and seventy-seven suits instituted; and in 1800 there were six hundred and eighty-seven suits commenced; showing a decrease, "notwithstanding," as he says, "all the temporary and untoward sources of federal adjudication," of five hundred and ninety suits. There is one circumstance of importance to be noted in making this calculation. In the year 1799 there were four hundred and twenty-three suits brought in South Carolina, which is more than one half of the whole number of suits brought in that State for ten years together. The greater part of these suits were brought by Miller and Company, for the infringement of a patent right which they had obtained. The largest number of suits brought in that State, in any one year preceding the year 1799, was one hundred and four. The gentleman from Kentucky includes these suits in that year's account - - - - - 423

He includes all the criminal suits brought in those States from which the returns are made, amounting to 132, and all other suits, amounting to 722 - - - - - 854

Making, for suits brought in the year 1799, the number of - - - - - 1277

Then he allows for suits of 1800, only 687

He omits the whole of the criminal suits of that year, which amounted to 102, and of other suits 100; making together, thus omitted, - - - - - 202

Making together - - - - - 889

Leaving a decrease of suits, instead of 590, only - - - - - 388

It will be observed, as before mentioned, that there are included in the account of suits brought in the year 1799, 423 suits brought that year in the State of South Carolina.

These exceed by 319 the highest number of suits brought in any preceding year in that State. It will therefore be necessary to deduct these out of the above number, in taking a fair view of this subject - 319

The real decrease between the years 1799 and 1800 will only be - - - - - 69

But, in order to place this business in a still clearer point of view, I beg leave to submit a calculation showing the annual aggregate number of suits from 1790 to 1800, from which I have excluded the whole of the suits brought in South Carolina since the first establishment of the courts, viz:

In 1790, one hundred and eleven; in 1791, three hundred and six; in 1792, three hundred and eleven; in 1793, four hundred; in 1794, three hundred and sixty-five; in 1795, five hundred and twenty-

seven; in 1796, four hundred and sixty-six; in 1797, nine hundred and twenty-four; in 1798, six hundred and fourteen; in 1799, eight hundred and fifty-four; in 1800, seven hundred and eighty-one.

The following calculation is made in order to show the number of suits brought, *including* those of South Carolina, from 1790 to 1800, viz:

In 1790, one hundred and eleven; in 1791, three hundred and thirteen; in 1792, three hundred and thirty-three; in 1793, four hundred and forty-six; in 1794, three hundred and eighty-five; in 1795, six hundred and fourteen; in 1796, four hundred and ninety; in 1797, nine hundred and seventy-seven; in 1798, seven hundred and nineteen; in 1799, twelve hundred and seventy-seven; in 1800, eight hundred and eighty-nine.

Thus, although it is apparent that there has been a gradual increase of suits, since the first establishment of the judiciary, yet the gentleman from Kentucky has endeavored to impress an opinion, that the suits have decreased in the proportion that six hundred and eighty-seven bears to twelve hundred and seventy-seven; and this, to use the gentleman's language, "notwithstanding all the temporary and untoward sources of federal adjudications." Yet he has taken special care, in order to swell up the suits of the year 1799, to draw from "these temporary and untoward sources of federal adjudications," all the criminal suits of that year, and to include the three hundred and nineteen suits of Miller and Company; but observe, when he comes to put down the suits of 1800, to contrast them with the number brought in 1799, these "untoward sources" are immediately dried up; for he excludes from his account all the criminal suits of that year, and one hundred other suits. Pray, sir, what kind of arithmetic is this? Is this the federal arithmetic which gentlemen have talked so much about?

Permit me now, sir, to say but a word or two upon the unconstitutionality of this measure. The Constitution has declared that the judicial power shall be vested in a supreme court, and in such inferior courts as Congress may, from time to time, create. It has added, that the judges of both the inferior and superior courts shall hold their offices doing good behaviour; but may be removed on impeachment, by the House of Representatives and conviction by two-thirds of the Senate.

What words can go stronger to the exclusion of every dependence of that department upon the pleasure of any other? The people have thus duly secured the two great objects they had in view, the independence of the judges, and their responsibility. This, however, is a new way of getting at the judge without affecting his independence. We will not touch the judge, but we will slip the office from under him. We will not lower his salary while he is in office, but we will so contrive it that he shall be divested of his office and salary at the same time. Thus, a mere majority of each House, with the concurrence of the President, shall effect, without any fault in the judge, what the people designed should be brought about only by impeachment. But we are asked, "suppose Congress should appoint an army of judges?" I will

JANUARY, 1802.

Judiciary System.

SENATE.

suppose no such thing. There is every security the nature of the case will admit of, that they will not do it. I will suppose the abuse of no power which is delegated by the Constitution, except what is supposed and guarded against by that Constitution. If gentlemen will suppose the abuse of power in creating unnecessary offices, it is equally fair to suppose the abuse of the power they contend for, viz: that of destroying the courts. I may suppose that it will be done to get rid of judges, however salutary the system under which they may be appointed.

I trust, therefore, sir, that this resolution will not prevail, since it manifestly appears that the system which gentlemen propose to destroy, is in itself preferable to that which they intend to revive; and that the expense between the two is inconsiderable. But how much more ought this measure to fail, when, without any possible benefit from the change, it is to destroy the independence of the judges, and prepare the way for the subversion of our Constitution!

Mr. WRIGHT observed, by the constitution of Maryland the judges of the Supreme Courts hold their commissions during good behaviour; the justices of the peace, who hold their county courts, were subject to an annual appointment, but it being found impracticable to procure law characters to act as justices of the peace, and that none other were qualified to decide questions of law, it became necessary to change the system, and, in 1793, a law was passed dividing the State into five districts, with a law character at the head of each district to ride the circuit, who, with two associates for each county, composed the county courts instead of the justices under the old system. These new judges were appointed by the law during good behaviour; but this law being like all new laws, a measure of experiment, was limited to a short duration, and has been from time to time continued. At the last session many important amendments being contemplated, the law was repealed, and a new law passed embracing the proposed amendments.

I have heard of but two judges being appointed under the new law; both of them were judges under the old law, and both were Federalists.—Mr. Ridgely, formerly a Republican, latterly a Federalist; Mr. Tilghman, always a Federalist, who, although he supported his own opinions with firmness, always treated the opinions of others with respect and politeness, whose amiable private character and judicial integrity had been so generally satisfactory, that not a member of either branch of the Legislature intimated his removal. From this view it must appear, that our Government, which is truly Republican, was not impelled by the unworthy motives that have been ascribed to her, and that Federalists of merit where they can be found are treated there with respect. Now, let me call your attention to a case in Maryland, when the Government was Federal, and in doing that, if I should in any respect misstate it, I hope my colleague, who, I believe, at that time was a member of the State Senate, will correct me. In 1791, it was found necessary to es-

tablish a criminal court for Baltimore town, and a law passed authorizing the appointment of a judge with a salary, and four associates, (whose commissions were during good behaviour,) to hold that court. This law was also limited to a short period; Mr. Chase, then judge of the general court, then a Republican, was appointed the judge of the criminal court. At the next session of the Legislature, there was an attempt to impeach him on the ground that the offices were constitutionally incompatible; this, however, failed; the Legislature, then, to get rid of Mr. Chase, repealed the law, and renewed it "*totidem verbis*." The Executive, however, renewed Mr. Chase's commission; but, at the next session, so fixed were the Federalists on their purpose, that they repealed that section of the law that related to the judges, and amended it, that "the district judge should be the judge of the criminal court," and thus dismissed Mr. Chase, the obnoxious judge. But, during all this business, in neither case was the Constitutional right to repeal these laws ever questioned, although the judges' commissions were during good behaviour; which must show the Legislative opinion, that a commission during good behaviour could not be beyond the law that created it, and must furnish strong evidence to the point before us, at two different periods in the politics of Maryland, that will suit each side of the House, and form a contrast in which I think the Republicans will not suffer.

Mr. COLHOUN, of South Carolina.—Much time, Mr. President, has been spent in the important debate on the resolution before you; great ingenuity, great abilities, and much eloquence, have been displayed on the occasion, by gentlemen on both sides of the question, and the subject presented in almost every possible point of view. For me, therefore, at this late stage of the debate, to rise, for the first time, in this House, on a subject of such magnitude and intricacy, already so ably discussed, and expect to throw much light on the subject, or find much new ground to tread on, would be presumptuous. But, thinking as I do, that the present question, both in principle and in its consequences, is of the highest importance to the Union; under this impression, under this conviction, I should be unfaithful to my own feelings, were I to give a silent vote on the occasion. If I can, therefore, throw but the weight of a feather in the scale that I think ought to preponderate, I shall think myself justified in doing so. But, sir, the subject has been so much exhausted, as well as the patience of the House, that I shall endeavor to be as concise as possible, and draw into as narrow a circle as so extensive a subject will admit, the leading features of the case, which, I apprehend, should have most weight in deciding the question.

First, then, I shall endeavor to show, that the present resolution, in its effect, is repugnant to the express letter and spirit of the Constitution. And, secondly, I shall contrast the obvious and natural consequences that will arise from agreeing to the resolution, with those that would follow should we disagree.

On the first point, the most important, as well as the most proper question, is, have we power, under the federal Constitution, to repeal the late act of Congress, so far as it respects the office and salary of the judges appointed under that act? If, by the letter and express words of the Constitution, we have not the power, then farther reasoning on the subject would be unnecessary, and arguments drawn from expediency or in expediency would be useless and irrelevant to the question.

I am not, sir, disposed to advocate the late Judiciary system in all its modifications, as I think it imperfect, and not adequate to the purposes intended, and that it is not such an arrangement of the Judiciary as ought to have been adopted. But, as it has got into existence, and is in operation, and the judges appointed under the act, commissioned agreeably to the Constitution, during good behaviour, the ground is now changed; and although, previous to the adoption of the act, opposition to the in expediency of the measure would have been right, would have been proper; yet now, under existing circumstances, as the law has passed, and the Constitution has attached to the office of the judges appointed under it, durability of office, co-extensive with good behaviour, to amend would be proper, but to repeal the act, at least so far as it respects the judges, would be unconstitutional; for I am of opinion, that as soon as their appointments were completed, and their commissions during good behaviour received, that then their offices as judges were completely beyond the reach of Legislative power; and that therefore the present resolution, in its operations, so far as it respects the office of the judges, is unconstitutional, and ought not to be agreed to.

Permit me here, sir, to define the legal rule of explaining a deed, a law, or Constitutional point, and then to apply the part of the Constitution in question to that rule. The rule of law is to make such an exposition of the section or clause under consideration, as will comport with its plain meaning when the words are taken in their common and usual acceptation, agreeably to the English language. If the clause is composed of dubious and uncertain expressions, that will admit of different meanings, or if several parts of the instrument seem to contradict, or be repugnant to each other, then the rule is, to make such a construction, if possible, as will be consistent with reason, and agreeable to the intention and purview of the whole instrument taken together. I think I am correct on the rule of law. Let us now examine the parts of the Constitution connected with the present subject, and apply to them the rules of law. Amongst the detailed powers of the Legislature, under the eighth section of the first article of the Constitution, we find the following, to wit: "to constitute tribunals inferior to the Supreme Court."

If this was the only clause giving them power to establish the inferior courts, I would readily grant that the Legislature could make the law, and at pleasure repeal it, and that the judges, as to the tenure of their office under the act, would be at the will of the Legislature, the existence of the law determining the office of the judge, pre-

cisely in the same manner and on the same footing as of the Secretary of State, the Secretary of the Treasury, and the Secretary of the Navy. But the subject is more fully expressed and explained under the proper head, in the first section of the third article of the Constitution, where it says: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

Here the intention of the Constitution is explicit, and cannot be doubted; plainer words and a more clear constructed sentence cannot be penned. "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." We all fully and at once understand what is good behaviour in a judge, the oath he takes and the very nature of his office show it; to act with justice, integrity, ability and honor, and to administer justice speedily and impartially, is good behaviour; if he acts contrary, it would be misbehaviour, and the Constitution in that case has given a remedy by impeachment. If the clause, therefore, admits a certain, clear, and consistent construction, and no other part of the Constitution contains any article contradictory to it, which I contend is the case, the construction given by the gentlemen on the other side, being by implication only, and that against the plain and express words of the clause, will not be warranted by the principles of law; for if the Constitution is paramount to an act of the Legislature, then to hold an office during good behaviour, and during the pleasure of the Legislature, are synonymous terms; it must be so, or the act would be repugnant to the Constitution. The Constitution, on the face of it, appears to have been drawn with precision and correctness, nothing superfluous, nothing deficient. Had the Convention intended the construction now insisted for by the favorers of the resolution, to wit: that the judges of the inferior courts held their offices, not during good behaviour, but at the will of the Legislature, an explanatory clause after the words "good behaviour," would have been necessary and should have been inserted, to this effect: "Provided always, that the judges of such inferior courts shall hold their offices *only* during the existence of the law under which they may be appointed." By the clearness with which every part of the Constitution has been penned, it is right, it is fair, by analogy of reasoning, to say, that as no such provision is inserted, no such supposed construction was intended, and that therefore the plain letter and spirit of the Constitution must prevail. But, if possible, to make the matter more clear and conclusive, I beg indulgence, whilst I state three collateral arguments which greatly strengthen and enforce the construction which I advocate of that part of the Constitution. The first is, that all enlightened statesmen, at least since the Ameri-

JANUARY, 1802.

Judiciary System.

SENATE.

can Revolution, with concurrent testimony, agree, that the Judiciary ought to be kept separate from, and independent of the Legislative and Executive powers; that without this check and control, there could be no true and rational liberty. Secondly, that the framers of the Constitution, who were themselves amongst the best informed and most distinguished citizens of the Union, intended to keep them distinct and separate, as the three great divisions and supporting pillars of the Constitution; this appears from the distinct position they assigned each on the face of that instrument. And thirdly, by the latter part of the first section of the third article, the Legislature have no power to lessen a judge's salary, even to the amount of one cent. This restriction must refer to the Legislature, as they alone have control over the funds of the Government; for the rule of law is, "that is certain, which can be rendered certain." If, therefore, this clause restrains the Legislature from even diminishing the salary of the judge, *a fortiori*, it prevents the removal from the office itself, as the words composing the whole clause are equally plain and expressive. Thus it appears, at least to me, by the plain and obvious construction of the words of the Constitution, confirmed and explained by the makers of it, that all the judges have a right to hold their offices during good behaviour, and that the Legislature, as a creature of that Constitution, cannot by any Legislative act, remove them. The gentlemen who advocate the resolution, in support of the measure, say, that Virginia, Maryland, and the last Congress, afford examples of the Legislature abolishing courts, and removing from office judges who, under a Constitution, held their appointments as in the present case, during good behaviour. Let us examine the facts, and see if they apply. Virginia had a general court, with common law jurisdiction, which extended throughout the State, a court of chancery, with equitable jurisdiction, equally extensive, and a court of admiralty; the judges of these three courts constituted the court of appeals. About the year 1787, the Legislature of that State found it necessary to establish circuit courts, and in the law enacted, that "the judges of the court of appeals should be the circuit court judges." This law the judges refused to execute as unconstitutional, and said, "they considered themselves as forming one of the three pillars on which the great fabric of government was erected, and that, when this pillar was endangered, a resignation would subject them to the reproach of deserting their stations, and betraying the sacred interests of society, entrusted with them; that the propriety and necessity of the independence of the judges, is evident in reason and the nature of their office, and that this applies more forcibly to exclude a dependence on the Legislature, a branch of whom, in case of impeachment, is itself a party." This was the opinion formed on the law by the then judges, who were some of the ablest lawyers, and greatest statesmen in the Union. I believe the event was, they protested against the law as unconstitutional, resigned their offices, had the resignation recorded, and after-

wards were appointed circuit judges. If this statement is correct, which I presume in substance it is, can it be said, that it affords an example that would justify, or in the smallest degree support the principles of the resolution? In the case of Maryland, I have not had full information, therefore cannot decide. In the case of Tennessee and Kentucky, the district courts were abolished; the judges were not removed from office; but by law continued as circuit court judges, with additional duties and additional salary of five hundred dollars each. They neither vacated their office, nor had to take a new oath or new commissions; therefore, in this case, there was no violation of the Constitution. But, to sum the business up, the case of Virginia is against them; the case of Kentucky and Tennessee, not in point; and Maryland, should it afford an example, is the only and solitary one. But, let us now suppose for argument sake, though the fact is otherwise, that half of the States in the Union passed such laws; if those laws are founded on wrong and unconstitutional ground, should they be a precedent for us? Surely not. If they were founded in error, we ought to correct and not continue the error.

Some gentlemen have said, although we cannot remove the judge from the office, yet we can remove the office from the judge. To me this is a paradox in legislation. Do we mean to act indirectly, what we would not profess to do openly and directly? Are the gentlemen prepared to meet this question in all its consequences? Let me suppose they are, and sketch a law founded on the consequences of their repealing act, and exhibit the case in its real and true light. In framing a law the preamble should state facts, and explain the reasons for passing the act. Suppose, then, we should introduce, instead of their present repealing law, the following, viz: Whereas A, B, C, &c., the sixteen Federal judges appointed under the late act of Congress, although they have been commissioned during good behaviour, and have discharged the duties of the office with integrity, ability, and honor, yet we, the Legislature, in Congress assembled, finding their number to be more than we judge necessary for the administration of justice to the good people of the United States, and deeming the law under which they act not the best possible system that could be adopted, and thinking, also, that the public good requires that the judges of the inferior courts should not hold their offices during good behaviour, but should hold them at the will of the Legislature: Be it therefore enacted, &c., That the said sixteen Federal judges shall be, and they hereby are, removed and discharged from their respective offices as judges, and shall not be entitled to any compensation or salary after the passing of this act. This act and preamble would be in truth only what the repealing act in its effects intended, and will naturally produce.

Are we prepared to vote for a law in this form, with all the true reasons stated on the face of the act, and to wish that publicity should be given to it among our constituents, as an act that completely destroys the independence of their judges?

For the removal of the judges, I may venture to assert, is the great object of the repeal; and in this consists the injury from the Legislature assuming a power, without giving any reason in the act, as in the present case, "to repeal at pleasure any law establishing an inferior court," and by that means dismissing the judges from office. Party spirit, caprice, or personal dislike, would be sufficient cause of removal from office; the judges would know this, and perhaps some of them soon feel it. Let us suppose, and it is even supposable, that a cause came on before one of the dependent judges, between an influential member of Congress and a poor and obscure citizen; would any person say that the parties stood on equal ground, and that the scales of justice hung equal between them?

It would be almost beyond human nature for this dependent judge to be impartial, especially if his salary was the only means of subsistence; and men of great abilities, and well fitted for the office, might be in that situation, for a wise man tells us, that "the race is not always to the swift, nor riches to men of understanding." So fully am I convinced that the judges ought to be independent of the Legislature as well as of the Executive, that if there could be a doubt that they are not fully and completely so, the Constitution ought to be amended for that express purpose. Hitherto, the judges have supposed themselves to be independent, and the people have acquiesced under that belief, and ought and do wish their judges to be independent. One or two observations will prove their opinion on this point. All the States in the Union have, in their several constitutions, made their judges independent. The people at large, in every State, having sent members to their respective conventions, those conventions having fixed the conditional durability of offices in their judges, and the people uniformly acquiescing under their system, afford sufficient evidence of the public sentiment. Besides, in the case of Mr. Chief Justice Jay, when appointed Envoy Extraordinary to the Court of Great Britain, was not opposition to the appointment echoed from one end of the Continent to the other? That the example was dangerous, it put the judges under the influence of the Executive; that, although the prospect of an honorary appointment within the gift of the President was remote, yet it might influence and lessen their independence. If, then, the people were so alive and quick in feeling, when the causes of alarm were so remote and contingent, what will, what must, be their opinion, when they find out that the judges, from being independent, by holding their offices during good behaviour, are reduced to the servile situation of holding the office at the will, at the caprice of a Legislature? Is the public mind prepared for a shock of this kind? Shall the Legislature with a strong arm, and by an assumed power, destroy their independence, and thereby their existence as one of the pillars of the Constitution? In this situation of your Judiciary, will the streams of justice flow equally to the habitation of the rich and cottage of the poor?

No man who knows human nature will answer in the affirmative.

Let us now for a moment examine the consequences of giving a negative to the present resolution. If the resolution is not agreed to, what are the dreadful and fatal consequences that would follow? I answer, the worst that can possibly happen is, the annual payment of about thirty thousand dollars, the salaries of all your circuit court judges, who do the whole business of these circuits throughout all parts of the Union. Their number will neither impede justice, nor injure the principle or execution of it. It is not in controversy, the right of the Legislature to arrange and modify all the courts of justice, so as to make them best answer the distribution of justice with convenience to the citizens; the whole Judiciary can be systematized and put on the best and most respectable footing, without violating your Constitution. If the circuit court judges are too numerous, say in your revising law, when vacancies happen, that such vacancies shall not be filled up until the whole are removed, or as many of them as it may be necessary to remove. Thus the evil would be continually remedying itself, and at no very remote period would be totally removed, and that without any interference with the Constitution.

On the other hand, should the resolution be carried, what are the evils that would result? Your judges in that case would hold their offices at the will of the Legislature, and be their mere creatures, subservient to all their whims, caprice, and party spirit; would cease to be a check or barrier between them and the people, in cases of unconstitutional acts and abuse of power. It would also produce, agreeable to the course of human nature, a servile disposition, which by degrees would enervate the mind, and completely, in process of time, destroy that manly independence and firmness, so essential to an upright and good judge.

If, then, the evils, as I have stated, would be greater from adopting the resolution, than those that would result from passing a negative on it; and we add to that balance, at least the doubt of its being against the Constitution—and that this doubt is well founded is evident from the nearly equally divided opinions of the members within the walls of the Senate, and by the sentiments of thousands throughout the United States, of the ablest statesmen and best citizens—let us, then, on this, at least precarious and doubtful ground, tread light and step with caution; for to destroy the independence of the judges, is wounding the Constitution in a vital part—it is removing one of the main pillars that support it. If we begin to infringe the Constitution in one instance, we may in another, and, by slow and imperceptible degrees, alter all the great and leading principles of it, until at last the substance would be gone, and the shadow only remain: for, like a body of water, if one drop makes its passage, the whole stream will soon follow.

Mr. C. then went at some length into a full statement of the duties and jurisdictions of the

JANUARY, 1802.

Judiciary System.

SENATE.

supreme, circuit, and district courts; showed where he thought them defective, and pointed out the practical amendments necessary to make a complete and uniform Judiciary; he urged that such amendments would produce a system much preferable to either the present or former, and would render the present motion for a repeal unnecessary. This statement he gave preparatory to his motion, which was as follows:

“Resolved, That a committee be appointed to inquire if any, and what, alterations are necessary in the Federal Judiciary system.”

This was rejected by the VICE PRESIDENT as being out of order; which gave rise to a verbal amendment, that the word “repealed,” in the original motion be struck out, and the words “revised” and “amended,” be inserted, moved by Mr. DAYTON, to the original resolution, on which the yeas and nays were taken, and it was determined in the negative, as follows:

YEAS—Messrs. Chipman, Colhoun, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Olcott, Sheafe, Tracy, Wells, and White—13.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright—15.

The main question was carried by a similar division, and Messrs. ANDERSON, BALDWIN, and BRECKENRIDGE, were appointed a committee to bring in a bill.

WEDNESDAY, January 20.

The Senate assembled, but, there being no quorum, adjourned.

THURSDAY, January 21.

The credentials of SAMUEL WHITE, appointed a Senator by the Legislature of the State of Delaware, to supply the vacancy occasioned by the resignation of their late Senator, Henry Latimer, were presented and read, and the oath prescribed by law was administered to him by the VICE PRESIDENT.

Mr. ANDERSON, from the committee to whom was referred the bill authorizing the discharge of Laurence Erb from his confinement, reported an amendment; which was read.

Ordered, That it lie for consideration.

Mr. TRACY, from the committee of conference upon the differing votes of the two Houses, on the amendments to the bill concerning the library for the use of both Houses of Congress, made a report, and the report was adopted: Whereupon,

Resolved, That the Senate do adhere to their fourth and sixth amendments, and recede from their seventh amendment, to the said bill.

FRIDAY, January 22.

A message from the House of Representatives informed the Senate that they recede from their disagreement to the fourth and sixth amendments to the bill concerning the library for the use of

both Houses of Congress. They have passed a bill fixing the Military Peace Establishment of the United States, and a bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and, by unanimous consent, was read a second time, and referred to Messrs. JACKSON, DAYTON, and HOWARD, to consider and report thereon.

The bill last mentioned in the message was read the first, and, by unanimous consent, a second time, and referred to Messrs. BALDWIN, SHEAFE, and MORRIS, to consider and report thereon.

Mr. ANDERSON, from the committee to whom was referred, on the 19th instant, the resolution for the repeal of an act of Congress, passed on the 13th day of February, 1801, reported a bill to repeal certain acts respecting the organization of the courts of the United States, and for other purposes; which bill was read, and ordered to the second reading.

The Senate proceeded to consider the amendment, reported by the committee, to the bill authorizing the discharge of Laurence Erb from his confinement, and the report was adopted, and the bill being further amended; on motion to expunge the last proviso, to wit:

“That the said judgment shall remain in full force against any estate, real or personal, which the said Laurence Erb may hereafter acquire, and that process may at any time be thereupon issued against the same.”

It passed in the negative—yeas 4, nays 21, as follows:

YEAS—Messrs. Jackson, Morris, Wells, and Wright.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Chipman, Cocke, Dayton, Ellery, T. Foster, Franklin, Hillhouse, Howard, Logan, S. T. Mason, J. Mason, Nicholas, Olcott, Sheafe, Stone, Sumter, and White.

On motion, that this bill pass to the third reading as amended: it was determined in the affirmative—yeas 19, nays 4, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Chipman, Cocke, Dayton, Ellery, Franklin, Jackson, S. T. Mason, J. Mason, Nicholas, Olcott, Sheafe, Stone, Sumter, Wells, and Wright.

NAYS—Messrs. T. Foster, Hillhouse, Howard, and Morris.

MONDAY, January 25.

JAMES ROSS, from the State of Pennsylvania, attended.

The bill, entitled “An act authorizing the discharge of Laurence Erb from his confinement,” was read the third time, and passed.

Mr. ROSS presented the memorial of the Philadelphia Chamber of Commerce, signed Thomas Fitzsimons, President, stating the decayed situation of the piers erected in the river Delaware, for the protection of vessels in the Winter season, and praying Congress to make such appropriations,

and take such other order thereon, as the necessity of the case requires; and the petition was read.

Ordered, That it lie for consideration.

The bill to repeal certain acts respecting the organization of the courts of the United States, and for other purposes, was read a second time; and, it was agreed that the consideration of this bill should be the order of the day for to-morrow.

TUESDAY, January 26.

Mr. BALDWIN, from the committee to whom was referred the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, reported amendments; which were read.

Ordered, That they lie for consideration.

The Senate resumed the second reading of the bill to repeal certain acts respecting the organization of the courts of the United States, and for other purposes; and, having agreed to sundry amendments,

On motion of Mr. DAYTON,

"That the bill be referred to a select committee, with instructions to consider and report the alterations which may be proper in the Judiciary system of the United States, and the provision to be made respecting the judges of the circuit courts, established by the act of the 13th of February, 1801, in case the said act shall be repealed:"

It passed in the negative—yeas 14, nays 16, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

On the question to agree to the reading of this bill as amended, it was determined in the affirmative—yeas 15, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Colhoun, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

The VICE PRESIDENT determined the question in the affirmative.

So it was *Resolved*, That this bill pass to the third reading as amended.

WEDNESDAY, January 27.

A message from the House of Representatives informed the Senate that the House have passed a bill to repeal, in part, the act, entitled "An act regulating foreign coins, and for other purposes," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. MORRIS presented the petition of White, Brothers & Co., and others, in behalf of the hat

manufacturers of the city of New York, praying additional duties on the importation of foreign hats, and the repeal of the duties on wool and hat trimmings; and the petition was read.

Ordered, That it lie on the table.

Mr. BALDWIN, from the committee to whom was referred, on the 15th instant, the bill authorizing the discharge of John Hobby from his confinement, reported the bill without amendment.

The Senate took into consideration the amendments reported by the committee to the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, which were adopted; and, on motion to strike out the third and fourth sections of the bill, it was agreed that the further consideration thereof be postponed until to-morrow.

The Senate proceeded to the consideration of the report of the committee on the bill authorizing the discharge of John Hobby from his confinement; and, on the question to agree to the third reading of this bill, it passed in the negative. So the bill was lost.

On motion, that it be

Resolved, That — be, and they are hereby, appointed a committee to inquire whether any, and, if any, what regulations are proper to be adopted respecting public officers and agents who shall squander public money officially entrusted to them, with leave to report by bill, bills, or otherwise:

Ordered, That this motion lie for consideration.

JUDICIARY SYSTEM.

The bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes, was read the third time, and the blanks were filled, when

Mr. DAYTON said, that although he had been defeated in two attempts to arrest the progress, or turn the course of this business, he was not, however, so far discouraged as to be deterred from making one other. It would, he said, be recollected, that all which had been asked by him and by the opposers of this measure, in the first instance, was to attempt some modification of the law proposed to be repealed; but this was refused them. It was then proposed that both parties should unite their labors with a view to revise and amend the whole Judiciary system, but this also was denied them. Yesterday he had offered an amendment combining both objects; but it was negatived. He was encouraged, however, to renew it, with a little variation, even in this late stage of the bill, because he had learned that it had not been perfectly heard and understood by one of the gentlemen who had voted against it. He took leave to remind honorable members, that these conciliatory motions had been rejected by a majority of one, or at most two only, and that of course the Senate were almost equally divided.

Mr. D. concluded by saying, that it could not come to good, if measures, admitted by some to be bold and violent, and believed by many others to be unconstitutional, should be carried by a bare majority, and he trusted, therefore, that this proposition would now succeed. He then moved

JANUARY, 1802.

Judiciary System.

SENATE.

that the bill be referred to a select committee with instructions to consider and report the alterations which may be proper in the Judiciary system of the United States.

Mr. COLHOUN begged to be indulged with the expression of a few ideas, which he considered the more important as the bill was likely to be carried by a casting vote. He had before thought, and he still thought, the best way was to appoint a committee to prepare a system that would accommodate the varying ideas of gentlemen. He had voted yesterday against the proposition made, under the impression that provision was thereby to be made for the judges. This he thought quite premature, before it was known that the act would be repealed; as it was at any rate doubtful whether one-half of the Senate did not think the meditated repeal a violation of the Constitution. He thought, for harmony, it were better to refer the bill to a select committee. The session would be two or three months longer, and if the report made by the committee should not prove agreeable, there would be time enough to bring in another bill. This attempt to harmonize all parties can do no injury, while, on the other hand, a system might be framed that gentlemen may be better pleased with than even a repeal of the act.

Mr. NICHOLAS said, he flattered himself the subject was well understood by the Senate. What is now the question? The same that has been so often decided. Gentlemen, in opposition, have said amend, but do not repeal. He could say that every vote of that House, in every stage of the discussion, had said repeal and do not amend. He believed the old system required but little amendment. It was the best suited to the interests of the United States and of the States. The law of the last session was in fact a bar to improvement. Gentlemen say, why not provide for these judges as you have provided for a judge of the Supreme Court? He would reply that the last operation was simple and easy of execution; but how were we in this mode to get rid of the circuit judges without having these courts in one part of the Union and not in another?

The gentleman from New Jersey has said that this measure is admitted to be bold and violent. By whom is it admitted? Not by me, or gentlemen who think with me. As to a regard to the Constitution, there is no man here, let his boast of federalism be what it may, who can take stronger ground than I hold. Gentlemen profess a great respect for the Constitution; but our principles are not to be evidenced by mere professions. They are to be evidenced by the series of our actions. My conduct, said Mr. N., since the formation of the Constitution to this day, is known by those who know me, as well as the conduct of gentlemen is known by those who know them. To the people I appeal. I am not to be alarmed by the tocsin of hostility to the Constitution that is so loudly sounded in our ears. I hope, sir, we shall have the question.

The question was then taken on Mr. DAYTON's motion by yeas and nays, and resulted—yeas 15, nays 15, as follows:

YEAS—Messrs. Colhoun, Chipman, Dayton, D. Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

There being an equal vote, the VICE PRESIDENT declared himself in the affirmative, and the reference was carried.

The VICE PRESIDENT said he felt disposed to accommodate the gentlemen in the expression of their wishes, the sincerity of which he had no reason to question, to ameliorate the provisions of the bill, that it might be rendered more acceptable to the Senate. He did this under the impression that their object was sincere. He should, however, discountenance, by his vote, any attempt, if any such should be made, that might, in an indirect way, go to defeat the bill.

A committee of five members was then balloted for; the following is the result of the ballots:

Mr. BALDWIN 16, Mr. COLHOUN 16, Mr. DAYTON 15, Mr. ANDERSON 15, Mr. MORRIS 15, Mr. BRECKENRIDGE 14, Mr. BROWN 14, Mr. CHIPMAN 14, Mr. HILLHOUSE 14, Mr. COCKE 11, Mr. ELLERY 2, Mr. S. T. MASON 2, Mr. ROSS 2.

The five first named constitute the committee.

THURSDAY, January 28.

The bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes," was read the second time, and referred to Messrs. ANDERSON, ELLERY, and LOGAN, to consider and report thereon.

The Senate resumed the second reading of the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, together with the motion made yesterday for expunging the third and fourth sections; and

Ordered, That the bill be committed to Messrs. BALDWIN, MORRIS, and SHEAFE, further to consider and report thereon.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

I lay before you the accounts of our Indian trading houses, as rendered up to the first day of January, 1801, with a report of the Secretary of War thereon, explaining the effects and the situation of that commerce, and the reasons in favor of its further extension. But it is believed that the act authorizing this trade expired so long ago as the third of March, 1799. Its revival, therefore, as well as its extension, is submitted to the consideration of the Legislature.

The act regulating trade and intercourse with the Indian tribes will also expire on the third day of March next. While, on the subject of its continuance, it will be worthy the consideration of the Legislature, whether the provisions of the law inflicting on Indians in certain cases the punishment of death by hanging, might not permit its commutation into death by military execution; the form of the punishment in the former way being peculiarly repugnant to their ideas,

SENATE.

Judiciary System.

FEBRUARY, 1802.

and increasing the obstacles to the surrender of the criminal.

These people are becoming very sensible of the baneful effects produced on their morals, their health, and existence, by the abuse of ardent spirits, and some of them earnestly desire a prohibition of that article from being carried among them. The Legislature will consider whether the effectuating that desire would not be in the spirit of benevolence and liberality which they have hitherto practised towards these our neighbors, and which has had so happy an effect towards conciliating their friendship. It has been found too, in experience, that the same abuse gives frequent rise to incidents tending much to commit our peace with the Indians.

It is now become necessary to run and mark the boundaries between them and us in various parts. The law last mentioned has authorized this to be done, but no existing appropriation meets the expense.

Certain papers explanatory of the grounds of this communication are herewith enclosed.

THOMAS JEFFERSON.

JANUARY 27, 1802.

The Message and papers therein referred to were read, and ordered to lie for consideration.

Mr. JACKSON, from the committee to whom was referred, on the 17th of December last, the letter of Simon Willard to the Secretary of the Senate, relative to a clock executed by the said Willard for the use of the Senate, together with his account therefor, made report, which was read, and ordered to lie for consideration.

The VICE PRESIDENT laid before the Senate the memorial of Narsworthy Hunter, stating that he is appointed a Representative in Congress of the Mississippi Territory, and the inconveniences to which he is subjected from the delay of the bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation. Whereupon, the bill was read the second time and referred to Messrs. JACKSON, TRACY, and BALDWIN, to consider and report thereon.

Ordered, That the following resolution be referred to the same committee.

Resolved, That a committee be appointed to bring in a bill providing for the payment and extending the privilege of franking to any person who may attend as a member of the House of Representatives from any district under the jurisdiction of the United States.

The Senate resumed the consideration of the motion made yesterday.

That — be, and they are hereby, appointed a committee to inquire whether any, and, if any, what regulations are proper to be adopted respecting public officers and agents who shall squander public money officially entrusted to them, with leave to report by bill, bills, or otherwise.

And the motion was adopted.

Ordered, That Messrs. TRACY, NICHOLAS, and OGDEN, be that committee.

FRIDAY, January 29.

A message from the House of Representatives informed the Senate that the House have consid-

ered the resolutions of the Senate in respect to Lieutenant Sterret, the officers, and crew of the United States schooner *Enterprize*, and do not concur therein. They have passed two resolutions expressing the sense of Congress on the gallant conduct of Lieutenant Sterret, and the officers and crew of the United States schooner *Enterprize*; in which they desire the concurrence of the Senate.

The resolutions were read, and ordered to the second reading.

Mr. BALDWIN, from the committee to whom was referred, on the 28th instant, the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, reported the bill without further amendment; and the report was adopted.

Ordered, That this bill pass to the third reading as amended.

MONDAY, February 1.

The resolutions expressing the sense of Congress on the gallant conduct of Lieutenant Sterret, the officers, and crew of the United States schooner *Enterprize*, were read the second time, and, by unanimous consent, had a third reading.

Resolved, That the Senate do concur therein.

The bill, entitled "An act for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas," was read the third time.

On motion, to add to the preamble these words: "whereby a state of war now exists with the said Regency;" it passed in the negative.

Resolved, That this bill pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan; in which they desire the concurrence of the Senate.

The bill was read the first time, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. CHIPMAN, DWIGHT FOSTER, and WRIGHT, to consider and report thereon.

Mr. BRECKENRIDGE gave notice that he should, to-morrow, move for the discharge of the committee, appointed the 27th of January last, to whom was referred the bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes, with instructions to consider and report the alterations which may be proper in the Judiciary System of the United States.

TUESDAY, February 2.

Mr. ROSS presented the memorial of Jared Ingersoll and others, counsellors, practising in the courts of Pennsylvania, and in the Circuit Court of the United States, for the eastern district of Pennsylvania, submitting their unanimous opinion, deliberately and anxiously formed, that the circuit court, on the principles of its present organization, is an important medium for the administration of justice, and that the abolition of

FEBRUARY, 1802.

Judiciary System.

SENATE.

the court will probably be attended with great public inconvenience; and the memorial was read, and ordered to lie for consideration.

Mr. Ross, on presenting the above memorial of the bar of Philadelphia, against the repeal, observed that it was not his intention to embarrass the motion of the gentleman from Kentucky,* by moving, in the present stage of the business, its reference to the committee now proposed to be dissolved. He offered it, that the Senate, having before them the opinions of a respectable set of men, might be properly impressed by them. The opinions expressed were unanimous, and were strongly enforced in a letter accompanying the memorial, addressed to his colleague and himself, and signed on behalf of the bar, by Messrs. Dallas and McKean, the one the Attorney of the District, and the other the Attorney General of Pennsylvania.

A Message from the House of Representatives informed the Senate that the House have passed a bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The following Message was received from the
PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

I now lay before you—

1. A return of ordnance, arms, and military stores, the property of the United States.

2. Returns of muskets and bayonets fabricated at the armories of the United States at Springfield and Harper's Ferry, and of the expenditures at those places; and,

3. An estimate of expenditures which may be necessary for fortifications and barracks for the present year.

Besides the permanent magazines established at Springfield, West Point, and Harper's Ferry, it is thought one should be established in some point convenient for the States of North Carolina, South Carolina, and Georgia. Such a point will probably be found near the border of the Carolinas, and some small provision by the Legislature, preparatory to the establishment, will be necessary for the present year.

We find the United States in possession of certain iron mines and works, in the county of Berkley, in the State of Virginia, purchased, as is presumed, on the idea of establishing works for the fabrication of cannon and other military articles by the public. Whether this method of supplying what may be wanted will be most advisable, or that of purchasing at market, where competition brings everything to its proper level of price and quality, is for the Legislature to decide; and, if the latter alternative be preferred, it will rest for their further consideration in what way the subjects of this purchase may be best employed or disposed of. The Attorney General's opinion on the subject of the title accompanies this.

There are, in various parts of the United States,

* Mr. BRECKENRIDGE, the preceding day, gave notice that he should this day move to discharge the committee.

small parcels of land which have been purchased at different times for cantonments and other military purposes. Several of them are in situations not likely to be accommodated to future purposes. The loss of the records prevents a detailed statement of these until they can be supplied by inquiry. In the mean time, one of them, containing eighty-eight acres, in the county of Essex, in New Jersey, purchased in 1799, and sold the following year to Cornelius Vermule and Andrew Codmas, though its price has been received, cannot be conveyed without authority from the Legislature.

I enclose herewith a letter from the Secretary of War, on the subject of the islands in the lakes and rivers of our northern boundary, and of certain lands in the neighborhood of some of our military posts, on which it may be expedient for the Legislature to make some provision.

TH. JEFFERSON.

FEBRUARY 2, 1802.

The Message was read; and,

Ordered, That the Message and papers therein referred to lie for consideration.

JUDICIARY SYSTEM.

Mr. BRECKENRIDGE introduced the motion, of which he gave notice yesterday, that the committee appointed the 27th of January last, to whom was referred the bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes, with instructions to consider and report the alteration which may be proper in the Judiciary System of the United States, be discharged.

Mr. BRECKENRIDGE.—It will be recollected I yesterday gave notice, that I should this day move to discharge the select committee, to whom the judiciary bill was last week committed. As there are some gentlemen now in the Senate who were not present during any part of the discussion, I deem it proper to say a few words as to its progress, and as to the real situation in which it now stands.

Early in January this discussion commenced, on a resolution going to the unqualified repeal of the judiciary law of last session. After many days' debate, and at the moment when the question was about to be put on the resolution, a motion was made to transform it into a resolution for the amendment, instead of the repeal of the law. This was negatived. The resolution was then passed; a bill brought in; and carried to the second reading, when another motion was made to recommit it to a select committee, for the purpose of amending the system. This was also negatived. The bill was then ordered to its third reading, and, on the question for its passage, another motion was made for its commitment to a select committee, and carried by the casting vote of the Chair. In this situation it now rests.

During the whole of the discussion, those who were in favor of the repeal uniformly argued and voted against anything like amendment. They over and again avowed it as their opinion, that they would not consent to go into any amendments in the judiciary system, until that law was repealed; that they considered its existence as an insuperable bar to all amendments; and that indeed the only great amendment which they wished for,

at this time, was a repeal of that law, the obnoxious tendencies of which were, cancer-like, to be certainly removed by cutting it out by the roots.

On the other hand, the gentlemen in opposition contended, that the law was enacted and made with great deliberation and wisdom; that it was essential to the due administration of justice, and to the peace of the nation; that it requires no amendment, that it cannot be amended; for that even admitting the courts and judges erected by that law were useless and burdensome, yet Congress have not the power to put down those courts and judges, because they are in under the Constitution. We are therefore at issue upon the simple point, shall this law be repealed or not.

From this state of things, what can be expected from the labors of this committee? Can they, on the one hand, forward the views of those who carried to a third reading a bill to repeal a certain act which they considered as fundamentally vicious, by attempting to amend that act? Or, on the other hand, can they forward the views of those who think this law the result of experience and wisdom, and moreover fastened on the nation by the Constitution, by attempting to make radical changes in it? Can they, in short, from two such contradictory and opposite opinions, opinions at variance in principle and not in detail, ever hope to produce anything that will be satisfactory to both sides? They cannot, and it appears to me impossible that gentlemen can seriously expect it.

I consider it, Mr. President, as a great contest on principle, and not on detail. A committee cannot, and ought not to settle principles. On the floor of this House alone ought principles, furnishing the ground-work of legislation, to be originated and settled. Details only are proper from your select committees. We cannot abandon this question. It cannot be suffered to escape us, or be entangled in forms. It must be settled. We will have no modification of this bill. We must, on this floor, meet the plain unqualified question of repeal. And in order that we may be enabled to do so, I now move you, that the committee to whom the bill was referred on Wednesday last, be discharged from proceeding further therein. The bill will then be ready for its passage, and the whole merits of the subject open to discussion.

Mr. DAYTON.—I should not have arisen so soon in the debate, had the member from Kentucky been more correct in the information he has given the Senate. It must be recollected by the Senate, contrary to the gentleman's statement, that neither the first, second, or third motions made on the subject were the same. The first motion was to revise and amend, instead of repeal the act of the last session, and was negative; the second was for revising the whole Judiciary system, and connecting therewith a proposition to make provision for the judges, which had been disapproved of by one honorable gentleman, and also negative; the third so far differed from the second, as to be agreeable to that honorable member, and was agreed to. A committee was appointed. He recollected the anxiety of the friends of the honorable member, and of the honorable member himself, at not being

one of the committee. He was sorry his anxiety had produced the extravagant proposition on the table. Is not the gentleman's ambition satisfied? He might have been contented with the agency he already had in this business. He had already delivered two speeches that had been listened to with attention.

Gentlemen had, in the first stages of this business, been permitted to take their own course; while employed in the holy work of destroying the Constitution, they were suffered to go on, until their course was arrested by the reference of the bill. He would ask, if, when the subject was so referred, for the purpose of revising the whole Judiciary system, it was proper, wise, or decent, to discharge the committee, without their asking their discharge? He trusted a majority would not be found to sanction such a step. He trusted one at least, perhaps many, would be found among those in favor of a repeal, who would vote against discharging the committee. He trusted that a regard to appearances would save them from sanctioning such a procedure. The committee had not been inattentive to their duty. No such thing was even suggested. He trusted, therefore, the proposition would be rejected, and that in its adoption would not be found a practical comment on the conciliatory recommendation of the President, which had been echoed by gentlemen on that side of the House.

Mr. ROSS.—I have long had the honor of a seat in this House, and this is the first time I have ever heard a motion for the discharge of a committee, unless by a member of the committee itself. And what is the reason assigned? Difference of opinion on principle. With whom existed this difference? Surely not with one political side distinguished from another. For we have just heard the opinions of gentlemen of high talents, and of firm adherence to the same politics as those of the honorable gentleman, stating that the system is susceptible of amendment. Are gentlemen prepared to decide instantaneously, without information, against opinions so respectable? Surely this would not be legislating with accustomed caution: Are gentlemen prepared to say there is no middle ground? The wisest men deliberate the longest. Why then not wait until the committee report? Hear what they offer. If bad, reject it, but first hear. What appearance would this hasty procedure present? One day the Senate are equally divided, and, by a caution and moderation not easily forgotten, the bill is referred. Afterwards, though opinion is strengthened on one side, all modification whatever is rejected, and the subject is brought forward for a hasty decision. This Mr. R. did not think wise. He hoped the House would proceed cautiously. He hoped they would not proceed by rapid steps to a point that might be attended with serious consequences.

Mr. BRECKENRIDGE.—It is said that what I have done should satisfy a moderate man, and that my ambition should be satisfied. But what ambition can I feel? What prospects of ambition lie before me, in proposing the repeal of this law; when, instead of opening prospects of office to me, the effect is directly the reverse, by destroying those very offi-

FEBRUARY, 1802.

Judiciary System.

SENATE.

ces which I might expect? No, sir, my ambition on this, as I trust it will be on all other occasions, is to put down a system fundamentally pernicious. I have stated the grounds on which I deem it so, and I am ready to meet the sentiments of my country.

We are now told that we are to suspend this business for a short time to stop us from sealing the death-warrant of the Constitution. Let me tell these gentlemen, whatever expressions of terror they may make, that they pass by my ear like the wind, and leave not a trace behind. Where is the precipitation talked of? Did not this discussion originate on the eighth of January, and did not the business travel as slow as it could? Had not gentleman acknowledged it had been fully and deliberately discussed? He knew but one subject which had been so fully discussed. What can this select committee do? Have gentlemen answered my arguments on this point? If our opinions on the constitutionality of the bill are so various and contradictory, what can we expect from the magic of a committee but delay? I am sure, therefore, gentlemen are not serious, when they profess an expectation that the report will furnish a plan of accommodation. The principle must be settled here.

Mr. MORRIS begged leave to mention, that the statement made by the honorable member from Kentucky as fact, was not fact. Half of it was true; the gentleman had said we will listen to no amendment, we will have a simple repeal. But it was not true, that this side of the House had declared the system was pure, and admitted not of amendment. It had, on the contrary, been acknowledged by every member that had spoken, to be capable of improvement, and gentlemen had been called upon to point out the defective parts.

But, says the gentleman from Kentucky, we will have no modification of the bill. Is that gentleman, then, the keeper of the consciences of half the House, and the other half too? This is a degree of presumption I never before heard of—that he should get up and say that nothing could be offered which would be approved of. Mr. M. believed a system could be devised better than either the old or the new one.

Nay, Mr. M. said, he would appeal to the language of the gentleman himself, who had told us that, after all, we were content to repeal the law so that we spared the judges. Did not a member from Connecticut declare that he had voted against the law last session, believing it then, and still believing it to be a bad one? He could go on citing every member, that had spoken on his side, to the same effect.

Mr. BRECKENRIDGE.—The gentleman last up has misunderstood what I have said, and built all his observations upon it. I appeal to the House, whether I did not state, in so many words, when I made the motion to-day, that all the gentlemen in the opposition had, during the whole course of the discussion, contended that the courts and judges could not be put down? I have not said that all the gentlemen in the opposition were opposed to any amendment in the system, and, therefore, there was no possibility of the committee's

forming any system to meet the wishes of both sides of the House.

Mr. COCKE spoke in favor of the motion.

Mr. S. T. MASON.—I thought my friend from Kentucky had stated grounds that would not have been treated so rudely and abruptly by the gentleman from New York, who had so sternly reproached him with the charge of presumption. His friend had stated truly, that the question was repeal or not repeal, and it was on this question that the House had so often decided. As to the idea of the gentleman from Pennsylvania, that to discharge the committee would be indecent and improper, he really did not see in what possible light it was so. Committees were the mere creatures of the House—even the Committees of the Whole—and nothing was more common than to discharge them. This had been often done, and yet no complaint had been before heard of it.

[Mr. MASON here cited an instance in the Senate, where two members of a committee of three were prepared to report, when the third member, who was against the report, on motion, obtained the discharge of the committee.]

Mr. ANDERSON said, as he was one of the select committee, he thought it his duty to inform the House, that on his making inquiry, he found it had been determined by the committee to admit of no amendments to the system that were not connected with a provision for the judges. This fact would enable the Senate to judge what prospect there was of a report that would be satisfactory to them.

Mr. DAYTON contested the fact, and declared, that though one of the committee, he had no recollection of it. Mr. D. then went somewhat at large into the subject of reference.

Mr. ANDERSON replied.

Mr. TRACY.—In my opinion, few committees have been raised for more important purposes than that now proposed to be discharged; it has been raised for the purpose of considering and reporting such amendments as it would be expedient to make to the whole Judiciary system of the United States. They have sat but a short time; too short, I conceive, to be prepared to decide on the objects for which they were appointed, with sufficient deliberation and maturity of thought. What light has been shed upon the subject since their appointment to alter the course of proceeding then marked out by a Constitutional majority of the Senate? If proper then, is it not equally proper now to aim at a plan of accommodation? No new arguments have been urged. Are gentlemen determined at all events not to change their opinions? This would be improper. Daily instances occur—he hoped they always would occur—and he was sure they would occur in proportion to our desire of imbibing correct opinions, founded on truth. It will be recollected what fell from the Chair on that memorable day, that if the object of gentlemen appeared to be delay, it would not be permitted; but when the House was nicely balanced, it was desirable to give an opportunity to those who desired to devise a plan of accommodation.

Are gentlemen sincerely for making the plan as unexceptionable as possible? They may have their wishes gratified by giving us an opportunity of improving it; and then, if our amendments are not agreeable to them, they may reject them.

I voted for the act of the last session because I thought it a good one; I still think it so; but I declare that, for the good of my country, I will sacrifice all my pride of opinion, and immolate it unhesitatingly whenever that good requires. Is not prudence and caution pre-eminently required at this time? Does not the state of parties, for parties there are, require that we should heal, instead of irritating their wounds? If in this body to-day, one party adopts a particular measure, and to-morrow another party by accident gains an ascendance and destroys it, what would be thought of our proceedings? Was this the dignified mode in which legislation should go on? He was sure gentlemen would not in their hearts say so.

Mr. MORRIS spoke against the motion.

Mr. BALDWIN said, that from the subject as it now stood before the Senate, he was disposed to vote for the discharge of the committee, and that the Senate should itself proceed and finish the business. His reason was, that his own mind was made up to come to a decision on the main question, which had been for a month under discussion; and he had no reason to believe but that this was the case with the other members of the Senate. He also thought there could not be expected a more favorable moment to come to a fair and proper decision. He hoped he should never be in any Legislative Assembly in which it would not be his wish to have the actual majority of the Legislature make the laws and decide all legislative questions. It would give him great pleasure to see every member of the Senate present on this occasion; next to that was the pleasure of having reason to believe that the decision will now be the same as if the whole number was present; he had no doubt but it was generally so understood. This is the highest evidence that can be had in any deliberative assembly of what is their duty, and is the only thing that can be expected to give the most general and permanent satisfaction. He thought it very far from being a disrespect to the committee, or an unusual mode of proceeding; when the Senate is not ready to proceed in a business, they either postpone, commit, or adjourn it; whenever, in the opinion of the majority, the cause for the delay is removed, whether by the labors of the committee or of an individual member, the House proceed in the business, discharge the Committee of the Whole or the select committee, as is seen in every day's practice of Parliamentary Assemblies.

In the discussion of this morning, gentlemen appeared to have, in a great degree, given up what they had before considered their strong ground, viz., the superior excellency of the new judiciary system of last session, now proposed to be repealed. The argument this morning has turned on the incompetency of that system, and the importance of keeping the committee in ses-

sion, to devise another new one, to be composed out of both the former ones. He must beg leave to submit to the candor of the gentlemen, whether, if that was at present the state of their minds, they had not better let the old system, which has been in operation ever since the beginning of this Government, with which the country is well acquainted, and to which they have been so much accustomed, be continued in operation till their minds are more settled, and till more time can be given to mature and perfect amendments and alterations, which it seems now to be proposed to make as to juries, and other important provisions, which seem now to be in contemplation. He was very unwilling to distract the country by many propositions of new judiciary systems, following each other every session of Congress; he thought it more clearly evident than before, that it was best to go on and restore the old system for a year or two longer at least. As a member of the committee, he must declare it as his opinion, that there was very little prospect of their devising a new one, during the remainder of the present session, which would be so likely to be acceptable as the old; especially as it had never been pretended that the old one was so extremely vicious and intolerable that it might not be continued a year or two longer, till experience and reflection could devise something in which we could be more unanimous than in anything which has as yet presented itself.

The debate was further continued by Messrs. JACKSON, S. T. MASON, and WRIGHT, for the motion, and Mr. ROSS against it.

The yeas and nays were then taken, and were—yeas 16, nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Colhoun, Dayton, Dwight Foster, Hillhouse, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

So it was *Resolved*, That the said committee be discharged.

WEDNESDAY, February 3.

The bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the second time, and referred to Messrs. TRACY, DWIGHT FOSTER, and BROWN, to consider and report thereon.

JUDICIARY SYSTEM.

The Senate resumed the third reading of the bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes.

On motion by Mr. ROSS, to amend the first section, by adding thereto, "excepting so much thereof as relates to the courts thereby established in the third district;" it was determined in the negative—yeas 14, nays 16, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster,

FEBRUARY, 1802.

Judiciary System.

SENATE.

Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

YAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

Mr. BRADLEY thereupon rose.—Mr. President, I shall vote for the repeal, because it seems to me that we have got no use for these courts. The business was decreasing when they were appointed, and the old system seems to me to be much better than the new one. The lawyers of Philadelphia like the new one best, but it is for their interest to have a great many courts. Now, Mr. President, I look upon the repeal of this law only as one part of a great system. The system recommended by our worthy President, is a system of more glory than our country ever had. This system is to be completed by lessening all our expenses; by reducing our Military Establishment; by disciplining our militia; by repealing our internal taxes; and then, sir, we shall soon pay our debts, and with a great population of free citizens, we shall make all the tyrants of Europe tremble on their thrones, and in the middle of their armies. None of them will dare to attack this country. This is a glorious system. And then, Mr. President, I do not see how this can be so unconstitutional as the gentleman in the opposition pretend. The words in the Constitution, "to hold during good behaviour," have been interpreted very differently in different States; so I think we cannot apply to the States to fix a right meaning to these words. Well, who then shall we apply to? It seems to me we ought to apply to that country where these words were first used. Now, sir, in that country an act of Parliament can put down any courts or judges, though they do hold their offices during good behaviour. I do not see then, sir, why an act of Congress should not put down courts and judges in this country. The judges will still hold their offices during good behaviour, as much as they do in England.

Besides, Mr. President, I think if we interpret the Constitution as these gentlemen propose, it will amount to a perpetuity for this expensive system; because when a judge dies out, the President is bound to fill up his place; and even if they should all happen to die together, he must appoint sixteen new ones; so I don't see how we are ever to get rid of this system; 'tis an absolute perpetuity, unless God should be moved, as he was by the sins of the old world, to destroy us all by a flood. So, sir, I shall vote for the repeal.

Mr. ROSS.—I regret extremely that by an absence from the earlier part of this session, I have lost the interesting information which has been offered by the able and eloquent discussion of the question. When the intelligence reached me that such a bill was proposed, I lost no time in repairing to my seat, that I might, at least, discharge the melancholy duty of entering my solemn protest against a measure more pernicious in its nature, and more fatal in its consequences, than any ever proposed in this House.

Having already [in the debate on Mr. Ross's 7th Con.—6

motion to except the third circuit from the repealing law] stated my reasons for preferring the present to the former organization of the circuit courts of the United States, I shall repeat nothing respecting expediency, but confine myself strictly to an examination of our Constitutional power to pass the bill now under consideration. And in doing this, I do not mean to deny the power of Congress to add new judges to existing courts; to forbid the filling of vacancies so as to lessen the number of judges; to devolve new duties upon the courts, or take away old, but unnecessary jurisdiction; nor will I dispute their authority to abolish a particular court, where it can be no longer employed for the purposes of its institution, provided such abolition be attended with regulations guarding against the violation of public engagements. All these points may be safely conceded, and the concession will at once silence those gentlemen, who have as erroneously as boldly asserted, that the law of the 13th February, 1801, embraces a principle and furnishes a precedent as broad and as pernicious as the present.

That law declares that the first vacancy in the Supreme Court of the United States shall not be filled up. This would reduce the future number of that court to five.

How does this affect the independence of the court, or of any member of it? Surely there is no breach of your engagement with any individual, nor can I discover what gentlemen intended to condemn.

The same law, in the 24th section, provides that the district judges of Kentucky and Tennessee shall be component members of the courts in the sixth circuit; and it is now asserted that thereby the old courts are abolished, the judges divested of their old commissions, and appointed by the Legislature to fill the new offices vested by that act. But when the old system is examined, we find that the judges in those States had the power of holding *circuit* courts as well as district courts within their respective States. That by the late law they still remain judges of the circuit courts as before, and retain all the powers of *district judges*. That, as some new duties have been devolved upon them, a large additional compensation for their services has been added to their original salaries; and that they have all their original jurisdiction and more; they sit in the same court, hold the same office, have the assistance of other judges; they lose none of their independence, but gain a great increase of compensation. The law of 13th February, 1801, then displays the sacred regard of the last Congress for the Constitutional permanency of the Judiciary, instead of furnishing a precedent for the Legislative removal of judges from office.

By the bill on your table, the Legislature asserts and exercises the new and dangerous power of abolishing *all* the circuit courts of the United States, of removing from office *all* the judges of these courts, erecting new courts of the same name and with precisely the same jurisdiction, to be held by other persons, who are designated in the bill. The judges are displaced, not because you will no

longer employ circuit judges—for you appoint and employ other circuit judges; the courts are nominally abolished, not because inferior or circuit courts of the United States are useless, or the purposes of their institution at an end—for other courts, of the same name, with the same powers, and for precisely the same purposes, are enacted by this very bill. Whatever its title may be, the bill itself is nothing less than an act of the Legislature removing from office *all* the judges of *all* the circuit courts of the United States. It is a declaration that those officers hold their offices at your will and pleasure. That by law you signify your preference of other men, and that these shall serve you no longer.

This is a direct and palpable violation of the Constitution. After providing for the internal security of a nation, the great care of every legislator is directed towards the pure and prompt administration of justice. It is for the attainment of this great end, that government is principally instituted, and the people are happy, or miserable, as the Judiciary is pure, wise, and independent, or otherwise. The Executive, and Legislative authority, instead of being in their nature paramount, are rather auxiliary and subservient in promoting the free and irresistible operations of the judicial power. In our national Government these three great powers are clearly separated, and deposited in different hands. It is a Government of departments, each representing and exercising the sovereignty for a particular purpose, and each prohibited from encroaching upon or exercising the powers of another.

By article third, sections one and two, the judicial power is vested in a Supreme Court, and such inferior courts as Congress may from time to time establish. The judges of all courts of the United States are to hold their offices during good behaviour, and to receive a compensation, which shall not be diminished during their continuance in office.

The provision for their independence, both of Legislative and Executive power, was wise and absolutely indispensable. From the Constitution itself they have a transcendent jurisdiction, not only between citizen and citizen, but between a State and citizen, between different States, and between the United States and the several States. It would have been preposterous to subject the courts to those whose acts they are directed to interpret and control. The laws of Congress organizing the courts, define the number of judges in each court, fix their compensations and designate the extent of their jurisdiction. But the tenure of office is not derived from the laws, but from the Constitution; Congress cannot erect courts to be held by judges commissioned during the pleasure of the Executive, or of the Legislature, or during five or ten years only; such a law and such a tenure would be clearly unconstitutional.

But it is contended, that although the Constitution prohibits the Executive and Legislature from displacing a judge directly or by name, yet the Legislature may abolish the office, and thereby

indirectly effect the same end. For then there will be no office in which the judge can continue, nor any service rendered for which he ought to receive a compensation. There is no violation then of the letter of the Constitution, and the Legislature are the sole judges of its true spirit.

I answer, that no device, however subtle, will protect us in producing a forbidden result. An unlawful end cannot be reached by lawful means. This is a moral and logical truth of the old school, which I believe the new philosophy will find no process of reasoning to overturn; and I should be obliged to any ingenious gentleman for stating a syllogism which would produce such a conclusion. I know well that, by metaphysical abstractions, you may imperceptibly gain a little and a little more, until at last the illusion of the fallacy is scarcely within the compass of detection; but here, where every step can be so distinctly traced, the delusion is impossible. You admit that the dismissal of sixteen judges, by name, would be unconstitutional. What difference is there between this and your bill, which declares that the circuit courts shall no longer be held by the present judges, but by certain other men? You do not destroy the office of circuit judge, for you still retain the circuit courts. You remove the office from one set of men who now hold it, and give it to another set that pleases you better. Then you contend that this operation, being a removal of offices from men, is not a removal of men from office, as if your purpose was not as effectually attained by inverting the order of the words as without it; you say there shall be a removal, and yet admit that direct removal by you is unlawful. Surely so barefaced an evasion, so undisguised an usurpation of power, can deceive no man who is not already resolved to be deceived.

The honorable gentleman from Vermont has said, in this debate, that the words, "holding during good behaviour," used in the Constitution, have been very differently understood in the different States; and that the English courts, whose judges hold their office during good behaviour, may be abolished by an act of Parliament, which is held to be omnipotent.

The gentleman ought to recollect that there is no analogy in this respect between our national Government and that of Great Britain. There an act of Parliament can change the constitution. Here the written Constitution, established by the people, restrains the Legislature to the exercise of delegated power, and fixes immutably certain bounds which it may not pass. If it should rashly exceed the delegated power, our Judiciary, sworn to support the Constitution, must declare that the great *irrepealable statute* made by the people shall restrain and control the unauthorized acts of agents who have exceeded the limits of a special authority.

I could easily produce opinions of high respectability, from many of the States, showing that by the words, "during good behaviour," was understood a complete independence of the Legislative as well as Executive power, but at present I shall only refer to a case from Virginia, which is direct-

FEBRUARY, 1802.

Judiciary System.

SENATE.

ly in point, and decided by men of great eminence, whose talents and political opinions will not be questioned by gentlemen who are friends of this bill. As the case and opinion are printed, and in the hands of everybody, I merely repeat that the judges of Virginia, Mr. Pendleton at their head, did refuse to execute a law of that State as unconstitutional, and assigned their reasons in writing, among which are the following :

"The propriety and necessity of the independence of the judges is evident in reason and the nature of the office; since they are to decide between Government and the people, as well as between contending citizens; and if they be dependent on either, corrupt influence may be apprehended, sacrificing the innocent to popular prejudice, and subjecting the poor to oppression and persecution by the rich. And this applies more forcibly to exclude a dependence on the Legislature, a branch of whom in cases of impeachment, is itself a party.

"This principle supposed, the court are led to consider whether the people have secured or departed from it in their Constitution or form of Government. In that solemn act they discover the people distributing the Governmental powers into three great branches, Legislative, Executive, and Judiciary, in order to preserve that equipoise which they judged necessary to secure their liberty; declaring that those powers be kept separate and distinct from each other, and that no person shall exercise at the same time an office in more than one of them. The independence of the two former could not be admitted, because in them a long continuance in office might be dangerous to liberty, and therefore they provided for a change by frequent elections at stated periods; but in the last, from the influence of the principle before observed upon, they declared that the judges should hold their offices during good behaviour. Their independence would have been rendered complete by fixing the quantum of their salaries."

After stating the vast increase of duty, without a correspondent increase of salary, which they deemed such an attack on their independence that it would be inconsistent with a conscientious discharge of duty to pass it over, they say :

"For vain would be the precaution of the founders of our Government to secure liberty, if the Legislature, *though restrained from changing the tenure of judicial offices*, are at liberty to compel a resignation by reducing salaries to a copper, or by making it part of the official duty to become hewers of wood or drawers of water."

From which there can be no doubt that in the opinion of the highest law characters in Virginia, the words "during good behaviour," even without a provision for compensation, do secure to the judges a complete independence of the Legislature, as well as of the Executive power, in the tenure of their offices; and should an indirect attempt be made upon that independence, either by withholding pecuniary compensation, or by devolving duties too burdensome, the judges themselves may take up the law, and declare it to be void. I shall only add that the Legislature of Virginia, with moderation and good sense highly honorable to themselves, yielded to the judges, and new-modelled their law.

The same gentleman from Vermont has also complained that all our inferior courts, as well as

the Supreme Court, would, according to our doctrine, be unchangeable and eternal. This position is altogether incorrect and fanciful: for we admit that the Legislature may add to, or diminish jurisdiction; may forbid vacancies to be filled, and do many other acts contended for. But we deny that they can remove officers at their pleasure, and put others in their stead; that they can vacate the seats of all our criminal and civil judges, and fill them again with their own men. In one word, that they can assume Executive power over the Judiciary, and destroy and create in the same statute. The judicial power is in its nature as permanent and as unchangeable by the Legislature or Executive as the Constitution itself, and when it loses these attributes, we lose all security for property, for fame, and for life—we have nothing left that is worth preservation.

Some gentlemen have said in this debate, that the Supreme Court is better secured by the Constitution against the Legislature, than the inferior courts, and have made a grave distinction between the words "shall" and "may." I see no difference in the security of the judges of the respective courts. Try the efficacy of the new doctrine upon the Supreme Court. It is organized by law. The power which enacted, can repeal the law. We will remove the office from the judges, not the judges from the office. At present there are six judges in that court. There will be a *Supreme Court* if we repeal the law as to three. You may say the three eldest, the three youngest, or the three who wear wigs, shall hereafter hold the court. Nay, the principles of the present bill would warrant you in enacting that the present Supreme Court shall be abolished; and that the Supreme Court shall hereafter be held by the district judges, or any given number of them. And your justification is the same. You have legislated respecting the office only, although the fact will also be that the office is the same, but the officers are all changed by the new operation of your law.

By this horrid doctrine, Congress erects itself into a complete tyranny. All the judges of your civil and criminal courts hold their offices at the will of the Legislature. A majority of the two Houses is in reality the national Judiciary. "During good behaviour" means as long as the prevailing party in Congress choose to continue one of their own laws. When parties change, the judges must all go out. What can our citizens, what can strangers expect from such courts? If you pass laws impairing the obligations of contracts, or violating our public faith, or *ex post facto* in their operation, will our courts have courage enough to obey the Constitution and their oaths, by declaring such acts void? If you infringe the rights of a State, or deny the privileges secured to it by the Constitution, what remedy, what hope has the State? Will the judges dare to resist your law, or refuse to execute it? If they do, their doom is certain; you sweep away their offices by a law, and appoint others to do their duty; or you nominally erect new courts with the same jurisdiction, and leave the Executive to hunt for

more pliant men. Nay, should the courts and the Legislature be in session at the same time, and in the same place, the whole business may, on Legislative whim or passion, be taken out of the hands of the court who had began to hear it, and given to men more favorable to the claims of popular suitors, or the acquittal of favorite criminals. The Legislature thus becomes a corrupt despotism, under which no wise man would live, and to which no freeman ought to submit.

Instead of an august and venerable tribunal, seated above the storms and oscillations of faction, prepared to rescue innocence from the fangs of the oppressor, to stand in the gap as mediators between the great officers of Government and the people, between the National Confederacy and the individual States; you have a transient, artificial body, without a will or understanding of its own, impelled by your own machinery, and destitute of the celestial fire which should animate and direct its course. It will be the mimicry and the mockery of justice. No more will you see in the administration of justice, those men, whose acquirements and talents have called them to eminence at the bar. They will never consent to become the tools and victims of factions contending for mastery in the State. Even mediocrity in the profession will not leave ease and dignified independence for a seat of precarious duration, and where the hazard of degradation is imminent and irretrievable. You must resort to the dregs of the law, to the pests of social life, where you may find impudence without science, zeal without judgment, self-sufficiency without moral principle, and we shall soon see executioners instead of judges in the sacred seats of justice. When popular leaders sue before such courts, their adversaries must be manifestly in the wrong, and when the ruling party accuses, the prisoner at the bar will never be found guiltless. Such a state of things is certainly deprecatd by every honorable member of this House, and yet, in my apprehension, this fatal measure, if carried through, will hurry us forward into calamity and misfortune beyond the faculties of man to foresee or describe. Let us then stop while we are yet safe, while the boundaries of our power and our duty are yet visible; while we have a Government founded on opinion, unaided by force and supported by affection; a Government secured by solemn covenant and compact to abstain from the exercise of prohibited power. Upon our observance of this easy condition hang the hopes and happiness of the new world. The day we transgress, we fall from our high and happy state. Touch not then the forbidden tree; the taste may perhaps be sweet, but the sin is mortal, and from that moment our Paradise is lost.

Mr. ANDERSON.—Mr. President, when the subject now under consideration was first brought before the Senate, I did not intend to have taken any part in the debate. But the alarm which the gentlemen in the opposition have attempted to excite, and the impression they have endeavored to make upon the public mind, impels me to offer a few reasons in justification of the vote I mean to

give; and in offering these reasons I will endeavor to show, that if this law should not be repealed, it will, from the circumstances under which it passed, establish a precedent dangerous to the independence of this body, and subversive of the true principles of the Constitution. The gentleman from Pennsylvania, (just sat down,) has said that we cannot make use of lawful means to obtain an unlawful end. We do not mean to attempt it. But I trust that the reverse of the gentleman's position is equally correct: that this House ought not to have made use of unlawful means to have obtained a lawful end. It was lawful for Congress to have passed the law under consideration. But I cannot admit that either House were at liberty to make use of unlawful means to effect it.

In order to show that such means have been used in the passage of the law, I must refer to the admission of a fact, by the honorable member from New York. He has conceded, and it was well understood, that if any amendment had been made to this law, when in the shape of a bill before the Senate, and the bill had thereby been returned to the House of Representatives, the voice of the people would there have been spoken—their veto would have been given, and the bill would never have passed into a law. It must further be admitted, for your Journals prove it, that several amendments to the bill would have obtained, had not three of your Senators, who were appointed judges, in consequence of the passage of this law, voted against the amendments; and I believe it will not be denied, that if this law had not passed, no new judicial offices would then have been created, and that if those three Senators had not voted upon the bill, the law would not have passed. It then fairly follows, that the votes of those Senators created new offices, which thereby made places for themselves. I mean not to impeach the integrity of those gentlemen. But thus I conceive, that unlawful means have been used to effect the passage of this law. Means, in my judgment, directly contrary to the true intent and meaning of the Constitution; for, by article first, section sixth, it is declared that no Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time. I believe, sir, it was intended by this clause, that no member of Congress should be capable of giving any vote that might directly or indirectly put him into office, and yet we have seen three Senators, under this very law, put into offices by the effect of their own votes. The honorable member from New York has told us, that he would wish us to be as virtuous as Romans; I, sir, would wish to see every member of this Senate not only virtuous, but without suspicion. In the passage of this law, and the appointments made out of this body in consequence thereof, I conceive the Constitution to have been dangerously infringed. I therefore consider it highly expedient, in order to preserve the sacred principles of our Government, to

FEBRUARY, 1802.

Judiciary System.

SENATE.

preserve the character and independence of the Senate, that this law, which has thus passed, should be repealed; for, if the Senate do not show their marked disapprobation by its repeal, it will countenance the practice which has been adopted, and virtually sanction the right of the President to select members from this body and place them in offices which have been created by their own votes, and thereby establish a precedent subversive of the true intent and meaning of the Constitution, and destructive of the independence of the Senate; for it is a maxim in all Governments, that what has been once done, and acquiesced in, from thenceforth becomes a precedent. May we not then expect that some future President, desirous of carrying some favorite point, will have recourse to the same expedient to provide for his warm friends or favorites, and thus, from time to time, by enlisting a sufficient number of members in his interest, may he not acquire a very dangerous ascendancy, and thus most injuriously extend Executive patronage—than which nothing is more dangerous to the principles of a free Government? It is laid down by Paley, a very able writer upon the subject of free Governments, “that patronage ‘universally is power—that he who possesses in a ‘sufficient degree the means of gratifying the desires of mankind after wealth and distinction, by ‘whatever checks and forms his authority may be ‘limited or disguised, will direct the management ‘of public affairs. Whatever be the mechanism ‘of the political engine he will guide the motion.” Let us, then, keep the Executive power within its due Constitutional limits—less, I wish it not to have, and more, I am unwilling to give.

I will now, Mr. President, offer a few observations upon the constitutionality of repealing this law.

The gentlemen opposed to the repeal of this law, upon Constitutional grounds, have said that it will destroy the independence of the judges; and in order to support this position, much pains has been taken, so to blend and consolidate the whole judicial power as to make the offices of the judges of the supreme and inferior courts rest upon the same tenure. This, sir, is highly politic; for if the gentlemen could really persuade some of us that this doctrine is correct, they might prevent the repeal. But, sir, from the most impartial examination which I have been able to give this question, I am of opinion that the Supreme Court is created, ordained, and established, by the Constitution, and must continue to exist; and there is centred that independence, so much desired by the gentlemen in the opposition, and absolutely necessary, in my opinion, in every free and well regulated Government. The Constitution contemplates the existence of the Supreme Court from the very first organization of the Government; for it not only says, the judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may, from time to time, ordain and establish; but it expressly says, there shall be a Chief Justice, and that when the President of the United States is tried, the Chief Justice shall preside. Thus is the

Chief Justice as expressly spoken of in the Constitution as the President, and I do believe that we might as well attempt to abolish the office of President as that of Chief Justice. Assistant justices are also necessary to fill up the true meaning of the Constitution, for without them there could not properly be a Chief Justice; there might be a justice, but he could not be a chief, unless there were subordinate justices. Our Constitution was formed at a time when parties did not exist—the framers, no doubt, expected our first Legislature would organize the Government in all its parts, in conformity with the true intent and meaning of the Constitution, according to the principles of sound reason and common sense. Upon those principles has our Supreme Court been organized, and the judges thereof must, in my opinion, continue to hold their offices independent of the Legislature, and cannot be removed but by impeachment. But, sir, the courts intended to be abolished by the repeal of this law, having been created by Legislative will, and not by the Constitution, they are, in my opinion, in the power of that body who created them, in the same manner as the judges of the Supreme Court are in the power of the people, who created the Constitution, by which they hold their offices, and from which they can be removed by the people whenever they choose to change their Constitution. The power of Congress over the inferior courts having been very ably elucidated by several gentlemen who have preceded me, and with whom I accord in opinion, it being now late, I will make but few more observations before I conclude. I mean, however, Mr. President, to extend my views to that country from which we derive almost our whole system of jurisprudence, which has uniformly been acknowledged the best in the world, and principally on account of the great independence of the judges, and compare the independence of the judges of England with that of the American judges. I have said that our supreme judges are in office by the Constitution, consequently not removable at the will of the Legislature. The English judges are differently situated—they have no fixed Constitution to protect them, and are liable to be removed in two ways, either by the address of Parliament, or by the repeal of the law—yet have they long been considered as independent, because they are no longer removable at the pleasure of the King. But, sir, the judges of our inferior courts are more independent than those of England, for the judges of our inferior tribunals cannot be removed from office but by a repeal of the law which created their offices, or by impeachment. I have thought proper to take this concise view, and thus to compare the independence of the American judges with those of England, because from that country have we borrowed our ideas of the necessary and proper independence of a judge, and on the comparison we find that under the construction we give to the Constitution, the American judges are infinitely more independent than those of England. The fears, therefore, of the gentlemen in the opposition, which they have painted in so lively colors,

must certainly be unfounded, and believing that it is both expedient and Constitutional to repeal the law, I shall give my vote for the passage of this bill.

Mr. OGDEN.—Mr. President, those who may vote for the repeal of the late judiciary law, must be prepared to say, in the first place, that the new system has not advantages over the old, which will compensate the difference of expense; and then, secondly, that the Judiciary branch of the Government is altogether dependent on the Legislative branch.

As I cannot, Mr. President, subscribe to either the one or the other of these propositions, I feel it to be a duty, which I owe to my constituents and myself, to lay before the Senate those sentiments which shall actuate my vote on this occasion.

The only reason which I recollect to have been urged by the honorable mover of the resolution, upon which this repealing law is predicated, was, that there were no benefits in the new system, so superior to those in the old system, as would justify the additional expense. I shall, therefore, in the first place, examine and compare the principles of these two systems, in this view of the subject.

Permit me to observe, Mr. President, that, in my apprehension, the duties of the judges of the Supreme Court, and the duties of judges of inferior courts, as contemplated by the Constitution, are distinct duties, and that the old system is objectionable, because it assigns to the same set of men, these distinct, and in some measure, incompatible offices.

To show that these offices are thus distinct, I beg leave to refer to the Constitution, which in article one, section eight, says, "Congress shall have power to constitute tribunals inferior to the Supreme Court." Thereby plainly contemplating the one court as distinct from the other.

Again, article three, section one, provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices," &c. From whence the inference is irresistible, that the office of a judge of the one court was designed, by the Constitution, to be distinct from the office of a judge of the other courts; and that this conclusion is right, beyond all question, is manifest from the next section of the same article, which provides, that in two of the cases to which the judicial power of the United States was extended, "the Supreme Court shall have original jurisdiction, and in all other cases, the Supreme Court shall have appellate jurisdiction." Now, nothing in nature can be more distinct than the office of the judges to whom an appeal is made, and the office of the judges from whom an appeal is made; and yet under the old system, the function of these entirely distinct and incompatible offices were performed by the same persons, who on one day sat as judges of an inferior court, exercising original jurisdiction in the cause, and, in a few

days after, as judges of a Supreme Court, exercising appellate jurisdiction in the self-same suit.

This solid objection against the old system is remedied by the new.

But it has been urged, that this objection may be done away by preventing the same judge who gave his opinion, while sitting in an inferior court, from giving an opinion in the same cause, when sitting in the Supreme Court. I answer, that in such case, you must always lose one-sixth of the benefit of this great national tribunal, and frequently much more. It may happen, that in the same suit one judge may decide an important question of jurisdiction, upon a plea in abatement at one inferior court, and another judge the merits upon a question for a non-suit at the next court, and a third judge upon the form of action upon a motion in arrest of judgment at a succeeding court. Now, in cases like these, the Supreme Court would be reduced to one half of its number, and it might be shown that the most important questions, affecting the most important interests of this great community, under the Constitution, might be finally decided, upon writ of error, by two, nay, even one judge.

Let me ask, Mr. President, are there not a sufficient number of actors to be found who can, with ability, fill all the great characters in this great national drama? Or are we so poor, that in order to save a cent a man, we must compel one set of persons to play two parts? I hope, sir, this is not the case, but that the improvement which has been made in this particular alone, will be found worthy of the additional expense which it creates.

But, sir, there is another objection to the old system, now about to be revived, which appears to my mind to be insurmountable. I mean the natural impossibility of all the functions both of judges of the Supreme Court and inferior courts, of courts of original and courts of appellate jurisdiction, being performed by the six judges of the Supreme Court, either with tolerable convenience to themselves or to the public.

This position will, I think, be manifest when we consider the extent of this vast country, and that the same six judges must hold inferior courts of original jurisdiction twice in each year, in each State, (except in Tennessee and Kentucky,) and that all the judges must assemble twice a year in this Capitol, to officiate in the Supreme Court in the exercise of their appellate jurisdiction, so that the age and agility of a post-boy would be more necessary qualifications for judges, than that appropriate maturity and gravity for which they have been selected. Candor must admit, that to revert to this old system, would be to place upon our judges a most intolerable task and burden.

Again, under this old system, courts were frequently lost; a judge sometimes was sick, sometimes the rains descended, the floods rose, the roads became broken up, so as to render it impossible to hold the inferior courts at the prescribed times; by this means, suitors, parties, jurors, and witnesses, were disappointed, and thus was produced the law's delay; which is the greatest curse that can attend it.

FEBRUARY, 1802.

Judiciary System.

SENATE.

Besides, you might see one judge beginning a cause, another and another deciding, in its intermediate progress, and a different one entirely making the rendition of judgment.

These facts, sir, are completely proved by the memorial from the bar of Pennsylvania, now lying on the Secretary's table, and it has been admitted that if the testimony of the majority of the bar within the United States could be obtained, that it would prove the same thing.

That the new system remedies all these inconveniences, has not been disputed, and now it is about to be thrown away to save the community a paltry cent per man; *no, not so much, not a cent.*

But, sir, it has been objected that the judges of England ride the circuit of that kingdom, and decide many more causes than come before our courts.

Let me ask, whether, because twelve judges, assisted by as many other men learned in the law as they may require, to hold in their stead courts of Nisi Prius, can in *England* accomplish their business in an extent of three hundred miles square, does it follow that *in this country*, six judges, unassisted, can perform as much business over an extent of country of sixteen hundred miles square? And yet it has been so argued. *Admirable logic indeed!*

It has been further objected, that the State courts may be resorted to for that business which, by the Constitution has been assigned to the Courts of the United States, whereby the additional expense of the late establishment may be saved. What! are we so poor that the United States must thus ask alms from the individual States, by declining to continue a proper provision for such courts as may be necessary for the determination of the causes that may arise under the Constitution and laws of the United States? We might as well, upon the same principle, ask the State Governments to perform for the United States its Executive and Legislative duties; and what will this mighty saving be? the smallest part of a miserable cent apiece. Such a want of provision of a competent number of judges on the part of the United States, to afford prompt and convenient justice, in all cases arising under our Constitution and laws, is not only, in my mind, unworthy of this country, but seems like a denial to our citizens of the benefit of those stipulations made in their favor when that Constitution was adopted which brought us, and now binds us together.

It may be here worthy of remark, that if the State courts are to be resorted to, and the Legislature should take away appeals from such courts to the Supreme Court, as they seem authorized to do by the second section of the third article, which provides that "the appellate jurisdiction shall be liable to such exceptions, and such regulations as Congress should make;" then it will happen, that all Constitutional questions between the General Government and State Governments, must be decided by State tribunals; and everything thrown back, as far as relates to this subject, to

that state of things which existed under the Old Confederation.

But, sir, in my apprehension of this subject, the Legislature were bound to have made provision for a competent number of national courts of original as well as appellate jurisdiction; the one to be filled by inferior, and the other by Supreme Court judges. When this provision has been made, and when it is upon the full tide of successful experiment, is it wise, is it prudent, thus shortly, without the test of experience, to throw away these provisions, for the miserable savings now contemplated?

It has been, moreover, objected, that the business of the national courts has decreased, and that the same necessity for the new establishment, as formerly, does not now exist.

Permit me, sir, to observe that, while our population is increasing beyond all former example, while our treaties are growing in number, and our statute book is enlarging, it is a necessary consequence that the business of our courts must increase; and if business did not increase under the old system, it is a conclusive proof that that system was radically wrong. I admit that it is very difficult to make a provision exactly commensurate with the public wants; but it is certainly more safe to have such provision too broad than too narrow; and as the system must be uniform, it must be so extensive as to afford a speedy and convenient administration of justice to such portions of the country as most require it.

The result, Mr. President, of this comparison, under all these circumstances, clearly is, according to my judgment, that the system has such advantages over the old, as well in its greater propriety as in its perfect practicability and superior convenience, as will, by many times, outweigh that trifling additional expense which ought never have been set up against it.

But, sir, the gentlemen on the other side of the room appear to me, in a great measure, to have given up this point, and seem ardent to rush, even without a necessity, to give such a construction to the Constitution, as will render the Judiciary entirely dependent on the Legislature; this opens a great Constitutional point, to the discussion of which I approach with trembling.

It appears to me, sir, that the three pillars, namely, the Legislative, Executive, and Judicial, upon which our Government stands, are entirely independent of each other; that the functionaries in these three great departments are irresponsible to each other, and that they equally derive their official being and existence immediately from the Constitution itself, and not from any laws which may, from time to time, become necessary to bring these great departments into complete operation.

I say, sir, they are independent of each other, because there is no dependence or connexion between them, created by the Constitution; the first article whereof, sections one and two, provides for the Legislative, the manner in which they shall be chosen, and the term of their offices. So article two, section one, provides in like manner

for the Executive; and article three, section one, makes similar provisions for the Judicial. Now, sir, the sages who framed this Constitution would not have made these branches thus co-equal, co-ordinate, and independent of each other, if they had intended that either one might, by a law, be rendered dependent on either of the others; they perfectly knew, that it is as natural in politics as attraction is in physics, that the greater body must eventually draw within its vortex every lesser one, unless balanced and counteracted; they, therefore, instead of creating any dependence of any one branch upon any one of the others, which they would have done if they had so intended, have expressly provided that the Executive should continue in office for four years, Senators for six years, Representatives for two years, and Judges during good behaviour. How can it be said that one co-ordinate branch can abridge the time of the political existence of either of the others? And who can show that, if the Legislature can do this in regard to one of the other branches, why it may not do the same in regard to the other?

It has been observed, that independent judges for life may become dangerous, by having a complete control over your laws. I answer, that we are here not making but acting under the Constitution which has created this independence, and we are bound not to impair it. But, sir, I believe that the independence is in perfect conformity with the genius of the American people, and that it is dear to them.

Our forefathers came from a land where this independence existed in the then greatest extent in the known world. They boasted of it with pride to their children, as the highest birthright of a free citizen. They complained incessantly that here it was not so; that their judges were not independent, and this very reason, in our Declaration of Independence, is assigned as one of the causes of our separation from our mother country.

All the American Constitutions, in conformity to this idea, have endeavored to preserve the same independence of judges, by the most express terms, and the instrument now under consideration, uses the most unequivocal language that human wisdom can dictate, to secure (as far as it can be secured by paper) the independence of the Judiciary. Suffer me further to observe, that our Government is one of checks; that the power given by the Constitution to the Legislature is not general, but special; that it is not omnipotent, but limited; and that, therefore, necessarily a check against it must somewhere exist. Suppose the Legislature should pass bills of attainder, or an unconstitutional tax, where can an oppressed citizen find protection but in a court of justice firmly denying to carry into execution an unconstitutional law? What power else can protect the State sovereignties, should the other branches combine against them? And let me ask, where can such power be more safely lodged than in that branch of the Government, which, holding neither the sword nor the purse of the nation, cannot have

either the ambition or the means of subverting, to their own benefit, the provisions of our Constitution? I contend, sir, that by our Constitution, judges are not only independent, but irresponsible, except in the mode therein pointed out, which is by impeachment, and if liable to be put down in any other way, they will become dependent and servile creatures. If the proposed law obtains, they will be put down without impeachment, without trial, and for no reason whatever, except it be, either to save the smallest part of a miserable farthing, or on account of the great sin of having been appointed under the former Administration. I hope, sir, that such an unworthy reason, or such vindictive passions, will never operate to produce a measure which will shake and diminish the confidence which considerate men have hitherto had in that security, which they thought they possessed under this Constitution.

The argument most worthy of notice from the other side of the House, appears to me to be that which is founded on an idea that the judges about to be put down were not created by the Constitution, as it is said the judges of the Supreme Courts were, but by the Legislature; and that as the creature cannot be out of the reach of the creator, so these judges must be dependent on the Legislature.

First, I answer, that no sound distinction can be made between the tenures by which judges of the supreme and judges of the inferior courts hold their offices, according to the Constitution, and it having been admitted in argument, that the judges of the Supreme Court are not thus liable to be put down, it follows that judges of the inferior courts are not thus liable. But, sir, a distinction has been aimed at; it has been said, that the word *shall* has been used in reference to the one, and the word *may* in reference to the other; but I believe the word *shall* is equally applicable to both cases. Take the words, "the judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress *may*, from time to time, establish." Can any one doubt that the word *shall* is not equally imperative in the cases of both species of courts, and that the evident meaning of the Constitution is, that Congress shall appoint as well inferior court judges as Supreme Court judges, and that the word *may* is only introduced to take away, in regard to the inferior courts, that limitation which is made in respect to the Supreme Court? The language then is, there shall be but one Supreme Court, although there shall be as many inferior courts as Congress may establish. But this distinction, in regard to the tenure by which these respective judges hold their offices, altogether vanishes from my mind when I read in the Constitution that the judges both of the supreme and inferior courts shall hold their offices during good behaviour? The wit of man could not have invented more explicit terms. But it is said, that a law was necessary to bring into official existence the judges of inferior courts. I answer, a law was equally necessary to bring into official existence judges of the Supreme Court, and a law for the purpose was actually

FEBRUARY, 1802.

Judiciary System.

SENATE.

passed. How, then, can it be said, the one corps is created by the Constitution, and the other by a law? The truth is, sir, that no such distinction exists as the one which has been set up; and if the present law passes, it will be an irresistible precedent to any future Legislature who may be disposed, by a law, to put down the Supreme Court judges, and no ingenuity will be able to point out any solid distinction between the two cases.

Again, Mr. President, it is evident that the necessity of having made a law, in order to give official being to these judges, does not make them dependent on the Legislature, or prove that they do not hold their offices under the Constitution; because if such reasoning were good, it would equally prove, that the President, Vice President, Senators, and Representatives, do not hold their respective offices under the Constitution; but under those respective laws which have been necessarily passed to bring them into existence; such as the laws for the appointment of electors for election of Senators and Representatives, and for determining the number of Representatives by fixing the ratio. Will any one pretend, that by repealing the respective laws under which elections have been had, and the number of Representatives ascertained, that thereby the tenure of their offices, in respect to the time of duration, as fixed by the Constitution, can be impaired? Permit me to mention one more case: by section three, of article one, it is provided that new States may be admitted by Congress into this Union. Now, laws for this are absolutely necessary, such laws have passed; but, when passed, will any say that the political existence of these new States depends on the laws? No, sir, it depends on the Constitution, and, for this reason, a repeal of such laws, after admission, cannot annihilate the new States or affect their independence.

The necessary result of this inquiry is, that the office of inferior judges is derived from as high a source—and is equally independent of the Legislature—as that of the judges of the Supreme Court, the President, Vice President, Senators, and Representatives; that the official life and being of each is derived from the Constitution, and that the Legislature has been merely the organ made use of under the Constitution in bringing them into existence.

Has our Constitution then provided for our citizens this immense security of independent tribunals, and shall the Legislature now render them dependent on its own will and pleasure? Life, as well as property, may be at stake before our courts, and are they to be filled by independent judges, who are regardless equally of the smiles or frowns of men in power, or by the dependents of the party coming in and going out of office at each alternate change? Violent times have happened in other countries; there may be such times here; and if our criminal tribunals are then filled by the miserable minions of power, who can answer for the consequences? Who can say that blood will not flow down our streets in torrents?

I see gentlemen on the other side of the House

are smiling; but I beg them to recollect that such things may be brought home to ourselves; that I am not putting an extreme case; what has happened may happen. We have seen in France a Constitution universally adopted, and fidelity sworn to it in the face of Heaven; we have seen one independent branch of the Government first trench upon and then destroy another independent branch; we saw then the criminal tribunals filled, not with independent judges, but, instead thereof, with *monsters* and *executioners*, the vile dependents of the National Legislature, who were themselves, by means of these very tribunals, under the control of the infamous Robespierre; these cruelties were succeeded by another Constitution, and another; the independence of the National Legislature was, in its turn, trenched upon by the Executive, and finally, all the several branches of Government swallowed up together by the transaction at St. Cloud. I beg gentlemen to remember these awful dispensations of Providence: we are informed by the sure word of prophecy, that "the measure we mete unto others shall be meted unto us again; and if we sow the wind, we shall reap the whirlwind."

Bear in mind I beseech you, that justice is evenhanded, and that she may return to our own lips the bitter ingredients of this same bitter cup. Recollect that times have been when a Legislature has been turned out of their hall by armed soldiers; nay, stamped out of existence. Let us not, I pray, set an example which may hereafter plague us. Let us not be the first independent branch of the Government, which shall attempt the independence of another co-equal and co-ordinate branch. Let us follow the maxim of wisdom by resisting beginnings.

The gentlemen on the other side of the House have been peculiarly called the friends of the people; remember a friend in need is a friend indeed. Is there, then, not some one who will step out from among them to save this tottering branch of our Government from falling! Rest assured, it is dear to our fellow-citizens. Ask them, and every highminded American will answer at once, "Save us from the injustice, the oppression, and the miseries of dependent tribunals, by preserving to us, forever, the entire independence of our national judges."

Mr. NICHOLAS rose with the Constitution in his hand, but shortly after opening the book, and looking at it, sat down again.

Mr. BRECKENRIDGE.—Mr. President: While my honorable friend recollects himself, I beg leave to say a few words in answer to an argument which has been much pressed to-day. I did not intend to rise again on this subject, especially at so late an hour (about five o'clock) and I promise to detain the House but a few minutes.

I did not expect, sir, to find the doctrine of the power of the courts to annul the laws of Congress as unconstitutional, so seriously insisted on. I presume I shall not be out of order in replying to it. It is said that the different departments of Government are to be checks on each other, and that the courts are to check the Legislature. If

this be true, I would ask where they got that power, and who checks the courts when they violate the Constitution? Would they not, by this doctrine, have the absolute direction of the Government? To whom are they responsible? But I deny the power which is so pretended. If it is derived from the Constitution, I ask gentlemen to point out the clause which grants it. I can find no such grant. Is it not extraordinary, that if this high power was intended, it should nowhere appear? Is it not truly astonishing that the Constitution, in its abundant care to define the powers of each department, should have omitted so important a power as that of the courts to nullify all the acts of Congress, which, in their opinion, were contrary to the Constitution?

Never were such high and transcendent powers in any Government (much less in one like ours, composed of powers specially given and defined) claimed or exercised by construction only. The doctrine of constructions, not warranted by the letter of an instrument, is dangerous in the extreme. Let men once loose upon constructions, and where will you stop them. Is the *astutia* of English judges, in discovering the latent meanings of law-makers, meanings not expressed in the letter of the laws, to be adopted here in the construction of the Constitution? Once admit the doctrine, that judges are to be indulged in these astute and wire-drawn constructions, to enlarge their own power, and control that of others, and I will join gentlemen of the opposition, in declaring that the Constitution is in danger.

To make the Constitution a practical system, this pretended power of the courts to annul the laws of Congress cannot possibly exist. My idea of the subject, in a few words, is, that the Constitution intended a separation of the powers vested in the three great departments, giving to each exclusive authority on the subjects committed to it. That these departments are co-ordinate, to revolve each within the sphere of their own orbits, without being responsible for their own motion, and are not to direct or control the course of others. That those who made the laws are presumed to have an equal attachment to, and interest in the Constitution; are equally bound by oath to support it, and have an equal right to give a construction to it. That the construction of one department of the powers vested in it, is of higher authority than the construction of any other department; and that, in fact, it is competent to that department to which powers are confided exclusively to decide upon the proper exercise of those powers: that therefore the Legislature have the exclusive right to interpret the Constitution, in what regards the law-making power, and the judges are bound to execute the laws they make. For the Legislature would have at least an equal right to annul the decisions of the courts, founded on their construction of the Constitution, as the courts would have to annul the acts of the Legislature, founded on their construction.

Although, therefore, the courts may take upon them to give decisions which impeach the constitutionality of a law, and thereby, for a time,

obstruct its operations, yet I contend that such a law is not the less obligatory because the organ through which it is to be executed has refused its aid. A pertinacious adherence of both departments to their opinions, would soon bring the question to issue, in whom the sovereign power of legislation resided, and whose construction of the law-making power should prevail.

If the courts have a right to examine into, and decide upon the constitutionality of laws, their decision ought to be final and effectual. I ask then, if gentlemen are prepared to admit, that in case the courts were to declare your revenue, impost and appropriation laws unconstitutional, that they would thereby be blotted out of your statute book, and the operations of Government be arrested? It is making, in my opinion, a mockery of the high powers of legislation. I feel humbled by the doctrine, and enter my protest against it. Let gentlemen consider well before they insist on a power in the Judiciary which places the Legislature at their feet. Let not so humiliating a condition be admitted under an authority of resting merely on application and construction. It will invite a state of things which we are not justified by the Constitution in presuming will happen, and which (should it happen) all men of all parties must deplore.

Mr. MORRIS.—I rise to congratulate this House, and all America, that we have at length got our adversaries upon the ground where we can fairly meet. They have now, though late, reached the point to which their arguments tended from the beginning. Here I knew they must arrive, and now I ask, if gentlemen are prepared to establish one consolidated Government over this country? Sir, if the doctrine they advance prevail, if it be the true doctrine, there is no longer any Legislature in America but that of the Union.

All the arguments they have used in this debate went, of necessity, to that conclusion which is now happily avowed. The honorable member tells us the Legislature have the supreme and exclusive right to interpret the Constitution, so far as regards the making of laws; which, being made, the judges are bound to execute. And he asks where the judges got their pretended power of deciding on the constitutionality of laws? If it be in the Constitution (says he) let it be pointed out. I answer, they derived that power from authority higher than this Constitution. They derive it from the constitution of man, from the nature of things, from the necessary progress of human affairs. When you have enacted a law, when process thereon has been issued, and suit brought, it becomes eventually necessary that the judges decide on the case before them, and declare what the law is. They must, of course, determine whether that which is produced and relied on, has indeed the binding force of law. The decision of the Supreme Court is, and, of necessity, must be final. This, Sir, is the principle, and the source of the right for which we contend. But it is denied, and the supremacy of the Legislature insisted on. Mark, then, I pray, the result. The Constitution says, no bill of attainder, or *ex post facto* law shall

FEBRUARY, 1802.

Judiciary System.

SENATE.

be passed, no capitation or other direct tax shall be laid, unless in proportion to the census or enumeration to be taxed; no tax or duty shall be laid on articles exported from any State; no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another. Suppose that, notwithstanding these prohibitions, a majority of the two Houses should (with the President) pass such laws. Suppose, for instance, that a capitation tax (not warranted by the Constitution) or a duty on exports were imposed. The citizen refuses to pay; but courts dependent on the will and pleasure of the Legislature are compelled to enforce the collection. Shall it be said, that there is an appeal to the Supreme Court? Sir, that appeal is subject to such exceptions and regulations as Congress shall make. Congress can, therefore, defeat the appeal, and render final the judgment of inferior tribunals, subjected to their absolute control. Nay, sir, to avoid all possible doubt or question, the honorable member last up has told us in so many words, that the Legislature may decide exclusively on the Constitution, and that the judges are bound to execute the laws which the Legislature enact. Examine then the state to which we are brought. If this doctrine be sustained, (and it is the fair logical deduction from the premises laid down) what possible mode is there to avoid the conclusion that the moment the Legislature of the Union declare themselves supreme, they become so? The analogies so often assumed to the British Parliament, will then be complete. The sovereignty of America will no longer reside in the people, but in the Congress, and the Constitution is whatever they choose to make it.

I saw the end to which those arguments went but I would not throw it out to the people. Gentlemen will however recollect, that early in this debate I prayed them to pause and consider. I mentioned to them without this bar the result of their doctrine, and yesterday I warned them to beware of deciding on abstract propositions. But they insisted on the decision, and they still persist; let me then ask, what safety is left for the States?

Experience under the old Confederation had shown, that applications made by Congress to large communities were nugatory, and that to carry on the business of the National Government, it should be invested with a right of applying directly to individuals. But then the danger that it might swallow up the sovereignty of the States became evident. To provide against that danger, the Constitutional doctrine was established, that no power should be exercised by Congress but such as was expressly given, or necessarily incident, and as a farther security, provision was made prohibiting certain definite acts. But of what avail are such securities, when your Legislative authority is to be bounded only by your own discretion?

While I was far distant from my country, I felt pain at some things which looked like a wish to wind up the General Government beyond its natural tone; for I knew, *that if America should be brought under one consolidated Government, it could not continue to be a Republic.* I am attached to

Republican Government, because it appears to me most favorable to dignity of sentiment and character. I have had opportunities to make the comparison. But if a consolidated Government be established, it cannot long be republican. We have not the materials to construct even a mild monarchy. If, therefore, the States be destroyed, we must become the subjects of despotism.

It may perhaps be said that all judges are bound by oath to support the Constitution; but I ask, how is that to be done? Their power over your laws is denied, and when once it is established that you and you alone are the legitimate interpreters of the Constitution, *they* must be bound by your construction.

Gentlemen may flatter themselves that the danger from this quarter is remote or ideal. I know that so long as peace shall last, the States will be the general favorites, because they offer numerous objects to gratify little ambition; but no sooner shall this country be involved in war, than all men will look up to the National Government for patronage and protection. Having then the command of a large military force, it must, under the construction now set up, become supreme. Remember that the old Congress conferred (without authority) dictatorial power over a large extent of country, and that it was exercised and submitted to without opposition. Gentlemen in this House represent the sovereignty of the States. I now call upon them. Are they ready to prostrate that sovereignty at the feet of the General Government? I, sir, on the part of the State of New-York, beg leave to enter my solemn protest.

MR. JACKSON.—Mr. President, the gentleman from New-York really frightened me; for there is nothing I fear so much as a consolidated Government in America. I think as he does, sir, that the moment it takes place there is an end to our liberty. But upon reflection, I think that gentleman has raised an alarm without foundation; for he says, sir, that if the Congress should pass laws injuring the States, the inferior courts would execute them, because they are to be dependent upon the will of Congress. But, sir, if the gentleman will look at the Constitution, he will find it is there said, in the second section of the third article:—"In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact." The gentleman therefore may dismiss his fears, as to what may be done by the inferior courts, for there is always an appeal to the Supreme Court. I have always considered the independence of the several States as the safeguard of our liberties; they are the sixteen pillars which support the great arch of our empire, and I hope that nothing will ever be done to shake them.

MR. DAYTON.—Mr. President, what has fallen from the gentleman who has just sat down, reminds me of the story of a man who boldly denied the existence of a Deity, and undertook to prove

it from Scripture. He opened the sacred volume, and read therein the words, "there is no God." A bystander, who was not disposed to take such things upon trust, took up the book and recited the whole phrase: "The fool hath said in his heart there is no God;" and the position of this daring infidel vanished into air. Upon the same frail foundation rests the answer which has just been given by the last speaker to the irresistible arguments of my honorable friend from New York. It was stated by my honorable friend most distinctly, that although it might be pretended that there was an appeal from the inferior courts to the Supreme Court, yet, as that appeal was subject to such exceptions and regulations as Congress should make, it was in the power of Congress to defeat it altogether. The gentleman from Georgia has undertaken to prove, from the Constitution, that my honorable friend was mistaken; and how has he done it? He reads these words, "In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact;" here he stopped, and grounded his argument on the part which he read. Had he carried his eyes to what follows in the same sentence, and in the next two lines, he would have found that the clause stands thus: "In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make," being precisely what the gentleman from New York had stated, and what the gentleman from Georgia had thought proper to contradict.

But, sir, the object of the last speaker was not the single one of making an impression by a partial quotation from the Constitution. He saw the delicate, dangerous, and alarming ground upon which the member from Kentucky, who had been the prime mover of this measure, and the mouth-piece of his party, had placed the subject, and he was emulous of diverting us who are in the opposition, from exhibiting those newly professed, although secretly harbored, doctrines, in their true colors. Their deformity and dangerous tendency have, however, been so ably and strikingly displayed by the honorable gentleman from New York, that they cannot fail to make a serious impression on the public mind. And whatever may now be said or concealed, it must hereafter be understood, that upon the success of this measure depended one of the most precious provisions of our Constitution.

The question was then taken on the final passage of the bill and determined in the affirmative—yeas 16, nays 15, as follows.

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Colhoun, Dayton, D. Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act to repeal certain acts respecting the organization

of the courts of the United States, and for other purposes."

THURSDAY, February 4.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of Lyon Lehman; in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

FRIDAY, February 5.

The bill for the relief of Lyon Lehman was read the second time, and referred to Messrs. BRADLEY, TRACY, and OGDEN, to consider and report thereon.

Mr. CALHOUN presented the memorial and petition of Adam Tunno and others, merchants, of Charleston, South Carolina, stating that they were owners of the ship South Carolina, Paul Post, late commander, taken by certain Spanish privateers, and carried by them to Palma, in Majorca, and there condemned with her cargo in the year 1799, under the edict of the King of Spain; and praying the interposition of Government for their relief; and the petition was read.

Ordered, That it be referred to the Secretary for the Department of State, to report thereon to the Senate.

Mr. ROSS presented the memorial of the merchants of the city of Philadelphia, signed Willing and Francis, and others, stating that severe injuries have been inflicted on their commerce during the late European war, from the predatory cruisers of the contending Powers; reparation for which has been demanded, and, in some measure, obtained from Great Britain and Spain; but in consequence of the convention lately ratified with the Government of France, they are precluded from recurrence to the justice of that nation for damages sustained; and therefore pray redress from their own Government; and the petition was read.

Ordered, That it lie for consideration, and that it be printed for the use of the Senate.

Mr. TRACY, from the committee to whom was referred, on the 2d instant, the bill to authorize the settlement of the account of Samuel Dexter for his expense in defending against the suit of Joseph Hodgson, reported it without amendment.

Ordered, That the consideration of this bill be the order of the day for Tuesday next.

MONDAY, February 8.

The Senate took into consideration the memorial of the merchants of Philadelphia, presented on the 5th instant.

Ordered, That it be referred to Messrs. BALDWIN, BROWN, BRECKENRIDGE, ANDERSON, and HILLHOUSE, to consider and report thereon to the Senate.

TUESDAY, February 9.

The Senate resumed the second reading of the bill to authorize the settlement of the account of

FEBRUARY, 1802.

Proceedings.

SENATE.

Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson; and on the question to agree to the third reading of this bill, it passed in the affirmative—yeas 14, nays 14, as follows:

YEAS—Messrs. Chipman, Dayton, T. Foster, D. Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Colhoun, Ellery, Franklin, Jackson, S. T. Mason, Stone, Sumter, and Wright.

The VICE PRESIDENT determined the question in the affirmative.

So it was *Resolved*, That this bill pass to the third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage; in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

A motion was made "That a committee be appointed to take into consideration the expediency of continuing in force, and of revising and amending the act, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.'"

And it was agreed that this motion lie for consideration.

Mr. JACKSON, from the committee to whom was referred, on the 22d of January last, the bill fixing the Military Peace Establishment of the United States, reported amendments; which were read.

Ordered, That they lie for consideration.

Mr. S. T. MASON gave notice that he should, on Thursday next, ask leave to bring in a bill to repeal the act, entitled "An act for the punishment of crimes therein specified."

WEDNESDAY, February 10.

The VICE PRESIDENT laid before the Senate a letter from Mr. ARMSTRONG, one of the Senators of the State of New York, resigning his seat in the Senate.

On motion, it was

Resolved, That the Vice President be requested to notify this resignation to the Executive of the State of New York.

Mr. JACKSON, from the committee to whom was referred, on the 28th of January last, the bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation; and to whom was also referred the motion that a committee be appointed to bring in a bill providing for the payment, and extending the privilege of franking, to any person who may attend as a member of the House of Representatives, from any district under the jurisdiction of the United States, reported amendments to the bill first mentioned; which were read and considered.

Ordered, That the further consideration thereof be postponed until to-morrow.

The bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage, was read the second time, and referred to Messrs. TRACY, BROWN, and SHEAFE, to consider and report thereon to the Senate.

Mr. DAYTON presented the memorial of Abraham D. B. Marentille, stating that he had invented certain machines for the preservation of persons exposed to drowning by shipwreck, and praying a patent therefor; and the petition was read.

Ordered, That it lie on the table.

The bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the third time and amended.

Resolved, That this bill pass as amended.

The motion made yesterday, "That a committee be appointed to take into consideration the expediency of continuing in force, and of revising and amending the act, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,' was agreed to, and referred to Messrs. ANDERSON, TRACY, and BROWN, to report thereon to the Senate.

THURSDAY, February 11.

Mr. BRADLEY, from the committee to whom was referred, on the 5th instant, the bill for the relief of Lyon Lehman, reported an amendment; which was read and disagreed to.

Ordered, That this bill pass to the third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill making certain partial appropriations for the year one thousand eight hundred and two; and a bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district; in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

On motion, it was

Ordered, That Mr. BRADLEY be on the committee to consider the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan, in place of Mr. CHIPMAN, absent with leave.

The Senate took into consideration the amendments yesterday reported by the committee to the bill extending the privilege of franking to the delegate from the Mississippi Territory, and making provision for his compensation; which report was amended and adopted, and the bill passed to the third reading as amended.

Agreeably to notice given yesterday, Mr. S. T. MASON obtained leave to bring in a bill to repeal an act, entitled "An act for the punishment of certain crimes therein specified;" and the bill was read, and ordered to a second reading.

SENATE.

Proceedings.

FEBRUARY, 1802.

FRIDAY, February 12.

The bill to authorize the collection of fees due to the officers of the respective courts of the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district, was read the second time, and referred to Messrs. WRIGHT, S. T. MASON, and ANDERSON, to consider and report thereon.

The bill making certain appropriations for the year one thousand eight hundred and two was read the second time, and referred to Messrs. BALDWIN, TRACY, and ELLERY, to consider and report thereon.

The bill to repeal an act, entitled "An act for the punishment of certain crimes therein specified," was read the second time; and, on the question to agree to the third reading of this bill, it passed in the negative. So the bill was lost.

The bill for the relief of Lyon Lehman was read the third time and amended.

On the question to agree to the final passage of the bill as amended, it was determined in the affirmative—yeas 16, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Dayton, Ellery, T. Foster, Franklin, Jackson, S. T. Mason, J. Mason, Stone, Sumter, and Wright.

NAYS—Messrs. Dwight Foster, Hillhouse, Howard, Ogden, Olcott, Ross, Sheafe, and Tracy.

So it was *Resolved*, That this bill do pass with an amendment.

A message from the House of Representatives, informed the Senate that the House have passed a bill to amend an act entitled "An act to lay and collect a direct tax within the United States;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. S. T. MASON presented the memorial of the merchants of Alexandria, in the District of Columbia, signed William Hartshorn, and others, stating that they have sustained heavy losses, and, in some cases, entire ruin, while in prosecution of fair neutral commerce, from the depredations of French cruisers during the late European war, and praying redress; being precluded from a recurrence to the Government of France by the ratification of the late convention between the United States and the French nation; and the petition was read.

Ordered, That it be referred to the committee appointed on the 8th instant, who have under consideration the petition of the merchants of Philadelphia on the same subject, to report thereon to the Senate.

The bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, was read the third time, and the title amended.

Resolved, That this bill do pass as amended.

MONDAY, February 15.

The VICE PRESIDENT laid before the Senate the report of the Secretary for the Department of State, on the petition of Adam Tunno and others, to whom it was referred on the 5th instant; and the

report was read, and ordered to lie for consideration.

The bill to amend the act, entitled "An act to lay and collect a direct tax within the United States," was read the second time, and referred to Messrs. BRADLEY, HILLHOUSE, and NICHOLAS, to consider and report thereon.

Mr. BALDWIN, from the committee to whom was referred, on the 12th instant, the bill making certain partial appropriations for the year one thousand eight hundred and two, reported the bill without amendment.

Ordered, That this bill pass to the third reading.

Mr. BROWN presented the petition of John James Dufour, stating that he had been regularly instructed in the occupation of a vinedresser, and praying a grant, to himself and associates, of a tract of land suitable for a vineyard, on the Great Miami river, on the terms mentioned in the petition; and the petition was read, and ordered to lie for consideration.

Ordered, That so much of the Message of the President of the United States, of 2d February, 1802, as refers to certain small parcels of lands purchased under the authority of the United States, for cantonments and other military purposes, be referred to Messrs. OGDEN, BRADLEY, and BROWN, to report thereon by bill or otherwise.

Ordered, That so much of the Message of the President of the United States, of 2d February, instant, as refers to the report of the Secretary of War, on the subject of the islands in the lakes and rivers of our northern boundary, and of certain lands in the neighborhood of our military posts, be committed to Messrs. TRACY, BRADLEY, and BROWN, to consider and report thereon by bill or otherwise.

TUESDAY February 16.

The bill, entitled "An act making certain partial appropriations for the year one thousand eight hundred and two," was read the third time.

Resolved, That this bill do pass.

Ordered, That the amendments reported by the committee on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States, be the order of the day for to-morrow.

Ordered, That the petition of John James Dufour, presented yesterday, be referred to Messrs. BROWN, BALDWIN, and TRACY, to consider and report thereon to the Senate.

Mr. ROSS presented the memorial of the merchants and traders of the city of Philadelphia, signed Thomas Fitzsimons and others, stating their opinion that the present organization of the Judicial courts of the United States is highly beneficial in the administration of justice, and that its abolition will be of much detriment, and praying that, at least, it may be preserved so far as respects the courts of the third circuit; and the memorial was read, and laid on the table.

WEDNESDAY, February 17.

Two Messages were received from the President of the United States.

FEBRUARY, 1802.

Proceedings.

SENATE.

Agreeably to the order of the day, the Senate took into consideration the amendments reported by the committee on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States; and, after progress, the Senate adjourned.

THURSDAY, February 18.

The Message communicated yesterday from the PRESIDENT OF THE UNITED STATES were read, as follows:

*Gentlemen of the Senate, and
of the House of Representatives :*

I now transmit a statement of the expenses incurred by the United States in their transactions with the Barbary Powers, and a roll of the persons having office or employment under the United States, as was proposed in my Messages of December the 7th and 22d. Neither is as perfect as could have been wished; and the latter not so much so as further time and inquiry may enable us to make it.

The great volume of these communications, and the delay it would produce to make out a second copy, will, I trust, be deemed a sufficient reason for sending one of them to the one House, and the other to the other, with a request that they may be interchanged for mutual information, rather than subject both to further delay.

TH. JEFFERSON.

FEBRUARY 16, 1802.

*Gentlemen of the Senate, and
of the House of Representatives :*

I lay before both Houses of Congress for their information the report from the Director of the Mint now enclosed.

TH. JEFFERSON.

FEBRUARY 17, 1802.

The papers referred to in the Messages were read, and ordered to lie for consideration.

Mr. OGDEN, from the committee appointed on the 15th instant, reported a bill to authorize the President of the United States to convey certain parcels of land therein mentioned; and the bill was read, and ordered to the second reading.

Ordered, That Mr. S. T. MASON be on the committee to consider the bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes," in place of Mr. LOGAN, absent with leave.

The Senate resumed the consideration of the amendments reported by the committee, on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States.

Ordered, That the further consideration thereof be postponed until to-morrow.

FRIDAY, February 19.

The bill to authorize the President of the United States to convey certain parcels of land therein mentioned, was read the second time; and it was agreed that it should lie for consideration.

The following Message was received from the PRESIDENT OF THE UNITED STATES :

*Gentlemen of the Senate, and
of the House of Representatives :*

In a Message of the 2d instant, I enclosed a letter from the Secretary of War on the subject of certain

lands in the neighborhood of our military posts, on which it might be expedient for the Legislature to make some provisions. A letter recently received from the Governor of Indiana presents some further views of the extent to which such provision may be needed, I therefore now transmit it for the information of Congress.

TH. JEFFERSON.

FEBRUARY 18, 1802.

The Message and letter therein referred to were read.

Ordered, That the letter be referred to Mr. TRACY and others, the committee appointed on this subject the 15th instant, to consider and report thereon to the Senate.

Mr. TRACY, from the committee to whom was referred, on the 10th instant, the bill to allow a drawback of duties on goods exported to New Orleans; and therein to amend the act to regulate the collection of duties on imports and tonnage, made a report; which was read.

Ordered, That this report lie for consideration.

Mr. BRADLEY communicated sundry resolutions of the Legislature of the State of Vermont; which were read, as follows:

State of Vermont, in General Assembly :

Resolved, That, in the opinion of the Legislature, the following amendments to the Constitution of the United States would conduce to the happiness of the citizens thereof, by the establishment of an uniform mode for the choice of Electors of President and Vice President of the United States and of Representatives to Congress:

1st. That after the third day of March, in the year one thousand eight hundred and one, the choice of Electors of President and Vice President shall be made by the Legislature of each State, dividing the State into a number of districts equal to the number of Electors to be chosen in such State, and by the persons in each of those districts who shall have the qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Elector in the manner which the Legislature thereof shall prescribe; which district, when so divided, shall remain unalterable until a new census of the United States shall be obtained.

2d. That the elections of Representatives to serve after the third day of March, in the year one thousand eight hundred and three, shall be by dividing each State, by the Legislature thereof, into a number of districts, equal to the number of Representatives to which such State shall be entitled, and by the people within each of those districts who shall have the qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Representative in the manner which the Legislature thereof shall prescribe; which district, when so divided, shall remain unalterable until a new census of the United States shall be obtained.

MONDAY, February 22.

The Senate transacted no business to-day.

TUESDAY, February 23.

DE WITT CLINTON, appointed a Senator by the Legislature of the State of New York, in the place of John Armstrong, Esquire, their late Sen-

SENATE.

Proceedings.

FEBRUARY, 1802.

ator, who has resigned, produced his credentials, was qualified, and took his seat in the Senate.

The Senate resumed the second reading of the bill to authorize the President of the United States to convey certain parcels of land therein mentioned.

Ordered, That this bill pass to a third reading.

Mr. ANDERSON, from the committee to whom was referred on the 28th of January last, the bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes," reported it without amendment.

WEDNESDAY, February 24.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

I communicate to both Houses of Congress a report of the Secretary of the Treasury on the subject of our marine hospitals, which appear to require Legislative attention.

As connected with the same subject, I also enclose information respecting the situation of our seamen and boatmen frequenting the port of New Orleans, and suffering there from sickness and the want of accommodation. There is good reason to believe their numbers greater than stated in these papers. When we consider how great a portion of the territory of the United States must communicate with that port singly; and how rapidly that territory is increasing its population and productions, it may, perhaps, be thought reasonable to make hospital provisions there of a different order from those at foreign ports generally.

TH. JEFFERSON.

FEBRUARY 24, 1802.

The Message and papers therein referred to were read and ordered to lie for consideration.

Mr. MORRIS communicated sundry resolutions of the Legislature of the State of New York, which were read, as follows:

Resolved, As the sense of the Legislature, that the following amendments ought to be incorporated into the Constitution of the United States, as a necessary safeguard against pernicious dissensions in the choice of a President and Vice President, and as the most eligible mode of obtaining a full and fair expression of the public will in such election:

1. That the State Legislature shall, from time to time divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States; and shall direct the mode of choosing an Elector of President and Vice President, in each of the said districts, who shall be chosen by citizens having the qualifications requisite for Electors of the most numerous branch of the State Legislature; and that the districts, so to be constituted, shall consist, as nearly as may be, of contiguous territory, and of equal proportion of population, except where there may be any detached portion of territory, not of itself sufficient to form a district, which then shall be annexed to some other portion nearest thereto; which districts, when so divided, shall remain unalterable until a new census of the United States shall be taken.

2. That in all future elections of President and Vice President, the persons voted for shall be particularly

designated, by declaring which is voted for as President, and which as Vice President.

The Senate resumed the consideration of the amendments reported by the committee, on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States, which were in part adopted; and, after progress,

Ordered, That the further consideration thereof be postponed.

THURSDAY, February 25.

The Senate resumed the consideration of the report of the committee on the bill fixing the Military Peace Establishment of the United States; which were in part adopted; and having agreed further to amend the bill, the Senate adjourned.

FRIDAY, February 26.

The Senate resumed the consideration of the report of the committee on the bill fixing the Military Peace Establishment of the United States;

Ordered, That the bill be recommended to Messrs. BRADLEY, NICHOLAS, and JACKSON, further to consider and report thereon to the Senate.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

No occasion having arisen since the last account rendered by my predecessor of making use of any part of the moneys heretofore granted to defray the contingent charges of the Government, I now transmit to Congress an official statement thereof to the 31st day of December last, when the whole unexpended balance, amounting to twenty thousand nine hundred and eleven dollars and eighty cents, was carried to the credit of the surplus fund, as provided by law; and this account consequently becomes finally closed.

TH. JEFFERSON.

FEBRUARY 25, 1802.

*Gentlemen of the Senate, and
of the House of Representatives:*

Some statements have been lately received of the causes decided or depending in the courts of the Union in certain States, supplementary or corrective of those from which was formed the general statement accompanying my Message at the opening of the session. I therefore communicate them to Congress, with a report of the Secretary of State, noting their effect on the former statement, and correcting certain errors in it which arose partly from inexactitude in some of the returns, and partly in analysing, adding, and transcribing them, while hurried in preparing the other voluminous papers accompanying that Message.

TH. JEFFERSON

FEBRUARY 26, 1802.

The Messages and papers therein referred to were read, and ordered to lie for consideration.

Mr. WRIGHT, from the committee to whom was referred, on the 12th instant, the bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland from persons residing within the Territory of Columbia, by the marshal of the said district, reported amendments; which were read.

Ordered, That they lie for consideration.

MARCH, 1802.

Proceedings.

SENATE.

MONDAY, March 1.

Mr. BRADLEY, from the committee to whom was referred, on the 15th of February last, the bill to amend an act, entitled "An act to lay and collect a direct tax within the United States," reported amendments; which were read.

Ordered, That they lie for consideration.

The bill to authorize the President of the United States to convey certain parcels of land therein mentioned, was read the third time, and amended.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to authorize the President of the United States to convey certain parcels of land therein mentioned."

The Senate resumed the second reading of the bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes."

Ordered, That this bill pass to the third reading.

The Senate took into consideration the amendments reported by the committee, on the 26th of February last, to the bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district; and having in part agreed thereto,

Ordered, That the further consideration of this bill be postponed until to-morrow.

Mr. CLINTON presented the petition of Ebenezer Stevens, merchant, of the city of New York, stating that Thomas Watson, late master of the sloop Harriot, which was shipwrecked in the West Indies, soon afterwards purchased, with the funds of the petitioner, a certain American built ship called the Bellona; prior to which, and unknown to the purchaser, the said ship had been employed in illicit commerce, and, in consequence whereof, on her arrival at New York, she was seized by the revenue officers of that district, and there condemned; and that the petitioner can only obtain that relief which he prays by a special act of the Legislature; and the petition was read.

Ordered, That it be referred to Messrs. CLINTON, BROWN, and HILLHOUSE, to consider and report thereon to the Senate.

TUESDAY, March 2.

The VICE PRESIDENT laid before the Senate a report of the Secretary for the Department of Treasury, with a statement of the emoluments of the officers employed in the collection of the customs for the year 1801; also, a statement of the sums paid into the Treasury, by the collectors of each port, during the same year; which were read.

Ordered, That they severally lie on file.

The Senate resumed the second reading of the bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district; and having agreed to a further amendment,

Ordered, That this bill pass to the third reading as amended.

7th CON — 7

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives :*

I transmit, for the information of Congress, letters recently received from our Consuls at Gibraltar and Algiers, presenting the latest view of the state of our affairs with the Barbary Powers. The sums due to the Government of Algiers are now fully paid up; and of the gratuity which had been promised to that of Tunis, and was in a course of preparation, a small portion only remains still to be finished and delivered.

TH. JEFFERSON.

MARCH 1, 1802.

The Message and papers referred to were read, and ordered to lie for consideration.

The Senate took into consideration the amendment reported by the committee, the 19th of February last, on the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage; and the amendment was not adopted.

Ordered, That the further consideration of this bill be postponed until to-morrow.

Mr. BRADLEY, from the committee to whom was recommitted, on the 26th of February last, the bill fixing the Military Peace Establishment of the United States, reported amendments, which were read.

Ordered, That they lie for consideration.

WEDNESDAY, March 3.

Ordered, That the Message of the President of the United States, of the 1st instant, and the papers therein referred to, be committed to Messrs. TRACY, DAYTON, and CLINTON, to consider and report thereon to the Senate.

The bill, entitled "An act to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district," was read the third time.

On the question, Shall this bill pass? it was resolved in the negative.

So the bill was lost.

The bill, entitled "An act to repeal, in part, the act, entitled 'An act for regulating foreign coins, and for other purposes,'" was read the third time; and a motion was made for an amendment; and it was agreed that it should lie for consideration.

The Senate took into consideration the amendments reported by the committee on the 1st instant to the bill to amend an act, entitled "An act to lay and collect a direct tax within the United States;" and, having adopted the same,

Ordered, That this bill pass to the third reading as amended.

THURSDAY, March 4.

Mr. BRADLEY presented the petitions of Samuel Blodget, Thomas Tolman, and Aaron Shepard, collectors of the direct tax within the State of

SENATE.

Proceedings.

MARCH, 1802.

Vermont, stating that they have incurred, in the prosecution of that business, certain expenses, more than the compensation allowed by law; suggesting the expediency of further provisions on the subject, and praying the interposition of the Legislature for their relief; and the petitions were read.

Ordered, That they be severally referred to Messrs. BRADLEY, CLINTON, and HILLHOUSE, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee on the 2d instant to the bill fixing the Military Peace Establishment of the United States, which were amended and adopted; and

Resolved, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage.

And on the question, Shall this bill pass to the third reading? it passed in the negative—yeas 2, nays 21, as follows:

YEAS—Messrs. Morris and Nicholas.

NAYS—Messrs. Baldwin, Breckenridge, Brown, Clinton, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Hillhouse, Howard, Jackson, Logan, S. T. Mason, J. Mason, Ogden, Olcott, Sumter, Tracy, White, and Wright.

So the bill was lost.

FRIDAY, March 5.

The bill, entitled "An act fixing the Military Peace Establishment of the United States," was read the third time and further amended; and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 15, nays 10, as follows:

YEAS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Clinton, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Sumter, and Wright.

NAYS—Messrs. Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, and White.

So it was *Resolved*, That this bill pass as amended.

Ordered, That Messrs. DAYTON, MORRIS, and BALDWIN, be a committee to revise the rules for conducting business in the Senate, and to report such alterations and amendments as in their opinion may be necessary.

Mr. DWIGHT FOSTER, from the committee to whom was referred, on the first of February last, the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan, reported the bill without amendment.

Mr. TRACY reported from the committee to whom was referred the papers mentioned in the Message of the President of the United States, of the 1st instant, that the publication thereof would be unnecessary.

MONDAY, March 8.

The Senate resumed the second reading of the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan.

Resolved, That this bill be postponed until the next session of Congress.

The Senate resumed the third reading of the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins, and for other purposes.'"

Ordered, That the further consideration of this bill be postponed until the first Monday in April next.

The bill entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,'" was read the third time.

Resolved, That this bill do pass as amended.

Ordered, That Mr. TRACY be of the committee appointed the 1st instant on the petition of Ebenezer Stevens, in place of Mr. HILLHOUSE, who has obtained leave of absence.

TUESDAY, March 9.

Mr. S. T. MASON presented the petition of Albert Russell and others, stating that they were respectively entitled to quotas of land in consequence of their services in the Virginia line of the army, during the Revolutionary war, and having obtained warrants and surveys thereof, they were casually lost, and cannot be renewed without legislative interference, and therefor praying relief; and the petition was read.

Ordered, That it be referred to Messrs. TRACY, BALDWIN, and BRADLEY, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth Harbor—for rebuilding the light-house at the eastern end of New Castle Island—for erecting a light-house on Lynde's Point, and for other purposes; also, a bill for the accommodation of persons concerned in certain fisheries therein mentioned; and a resolution appointing a joint committee for the purpose of laying out, agreeably to law, the unexpended balance of a sum of five thousand dollars, heretofore appropriated to purchase books and maps for the use of the two Houses of Congress; in which bills and resolution they desire the concurrence of the Senate. They agree to some and disagree to other amendments of the Senate to the bill fixing the Military Peace Establishment of the United States.

The bill first mentioned in the message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. JACKSON, DWIGHT FOSTER, and OLCOTT, to consider and report thereon.

The other bill mentioned in the message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. FRANKLIN, JONATHAN MASON, and BALDWIN, to consider and report thereon.

MARCH, 1802.

Proceedings.

SENATE.

The resolution of the House of Representatives for the appointment of a joint committee for the further purchase of books and maps for the use of both Houses of Congress, was read, and ordered to lie for consideration.

The amendments disagreed to by the House of Representatives to the bill fixing the Military Peace Establishment of the United States were read, and the consideration thereof postponed until to-morrow.

Mr. ANDERSON gave notice that he should, to-morrow, ask leave to bring in a bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee.

WEDNESDAY March 10.

A message from the House of Representatives informed the Senate that the House agree to the amendment of the Senate to the bill, entitled "An act to amend the act, entitled 'An act to lay and collect a direct tax within the United States,' except to the fourth amendment, to which they disagree. They have passed a bill, entitled "An act for the relief of Francis Duchoquet," in which they desire the concurrence of the Senate.

The bill last mentioned in the message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. DWIGHT FOSTER, BALDWIN, and BROWN, to consider and report thereon.

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill, entitled "An act fixing the Military Peace Establishment of the United States."

Resolved, That they recede from their fourth and fifth amendments, and insist on their fifteenth amendment to the said bill.

The Senate took into consideration their amendment disagreed to by the House of Representatives to the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States.'"

Resolved, That they do insist on the said amendment, ask a conference thereon, and that Messrs. BRADLEY and TRACY be the managers on the part of the Senate.

The resolution of the House of Representatives for the appointment of a joint committee for the further purchase of books and maps for the use of both Houses of Congress, was read the second time, and ordered to the third reading.

Agreeably to notice, yesterday given, Mr. ANDERSON had leave to bring in a bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee, and the bill was read, and ordered to the second reading.

THURSDAY, March 11.

Mr. DWIGHT FOSTER, from the committee to whom was referred, on the 10th instant, the bill, entitled "An act for the relief of Francis Duchoquet," reported the same without amendment; and the bill was ordered to the third reading.

On motion, that it be

"Resolved, That a committee be appointed to inquire what further and more effectual means ought to be provided by law for carrying the mail of the United States:"

It was agreed that this motion should lie for consideration.

Mr. FRANKLIN, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act for the accommodation of persons concerned in certain fisheries therein mentioned," reported the bill without amendment, and it was ordered to the third reading.

The resolution of the House of Representatives for the appointment of a joint committee for the further purchase of books and maps for the use of both Houses of Congress, was read the third time.

Resolved. That the Senate do concur therein, and that Messrs. BALDWIN, CLINTON, and LOGAN, be the committee on the part of the Senate.

The bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee, was read the second time, and referred to Messrs. ANDERSON, NICHOLAS, and BALDWIN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House recede from their disagreement to the fourth amendment of the Senate to the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,' also, from their disagreement to the fifteenth amendment of the Senate to the bill, entitled "An act fixing the Military Peace Establishment of the United States." They have passed a bill, entitled "An act for revising and amending the acts concerning naturalization," in which they desire the concurrence of the Senate.

The bill last mentioned in the message was read, and ordered to the second reading.

Mr. CLINTON presented the petition of John Thomas, and others, aliens, residing in the city of New York and its vicinity, praying relief under certain unfavorable provisions in the act to establish an uniform rule of naturalization; and the petition was read.

Ordered, That it lie on the table.

Mr. ANDERSON, from the committee to whom the subject was referred on the 10th of February last, reported a bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers; and the bill was read, and ordered to the second reading.

FRIDAY, March 12.

The bill, entitled "An act for the accommodation of persons concerned in certain fisheries therein mentioned," was read the third time.

Resolved, That this bill do pass.

The bill, entitled "An act for the relief of Francis Duchoquet," was read the third time, and passed.

The bill, entitled "An act for revising and amending the acts concerning naturalization," was read the second time, and referred to Messrs.

SENATE.

Proceedings.

MARCH, 1802.

CLINTON, LOGAN, and SUMTER, to consider and report thereon.

The Senate took into consideration the motion made yesterday "that a committee be appointed to inquire what further and more effectual means ought to be provided by law for carrying the mail of the United States;" and it was agreed that Messrs. JACKSON, BRADLEY, and FRANKLIN, be the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the Marshals of certain districts therein mentioned," in which they desire the concurrence of the Senate. They have resolved to attend the funeral of Narsworthy Hunter, late a delegate to Congress from the Mississippi Territory, to-morrow at twelve o'clock, and desire the attendance of the Senate.

The bill mentioned in the message was read, and ordered to a second reading.

Mr. LOGAN presented the memorial and petition of the Illinois and Oubache land companies, signed William Smith and John Shee, the surviving committee on their behalf, praying Congress to devise some mode for a final investigation and decision of their claims, and the petition was read; and, on motion

Resolved, That this petition be rejected.

Mr. SUMTER presented the petition of Bailey and Walker, and others, merchants, of Charleston, in the State of South Carolina, stating that they have sustained considerable losses by irregular and illegal captures from privateers and other armed vessels cruising under the flag of the French Republic, whilst in pursuit of their lawful commerce, and that, by the late convention ratified by the two Governments, they are precluded from recurrence to the justice of the French nation for redress, and therefore praying relief from the Government of the United States; and the petition was read.

Ordered, That it be referred to the committee appointed the 8th of February last, on petitions of a similar nature, to report thereon.

Resolved, That the Senate will attend the funeral of Narsworthy Hunter, late delegate in the House of Representatives of the United States, to-morrow at 12 o'clock.

MONDAY, March 15.

Mr. BROWN, from the committee to whom was referred, on the 16th of February last, the petition of John James Dufour, reported a bill to empower him and his associates to purchase certain lands; and the bill was read.

Ordered, That it pass to a second reading.

The bill, entitled "An act for the relief of the Marshals of certain districts therein mentioned," was read the second time, and referred to Messrs. S. T. MASON, COCKE, and LOGAN, to consider and report thereon.

The bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, was read the second time and amended.

Ordered, That this bill lie for consideration.

TUESDAY, March 16.

Mr. TRACY, from the committee appointed the 18th of February last, on the subject, reported a bill for the better security of public money and property in the hands of public officers and agents; which was read, and ordered to a second reading.

The bill to empower John James Dufour and his associates to purchase certain lands, was read the second time and amended.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Ordered, That it be recommended to Messrs. ANDERSON, TRACY, and BROWN, the committee who brought in the bill, further to report thereon.

WEDNESDAY, March 17.

Mr. BRADLEY reported, from the committee to whom were referred, on the 4th instant, the several petitions of Samuel Blodget, Thomas Tolman, and Aaron Shepard, that the act lately passed, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,'" hath made all the Legislative provision in their judgment at present necessary, and, therefore, that the several petitioners have leave to withdraw their petitions; and the report was adopted.

The bill for the better security of public money and property in the hands of public officers and agents, was read the second time.

Ordered, That the consideration of this bill be postponed.

The bill to empower John James Dufour and his associates to purchase certain lands, was read the third time, and the blank in section 3d being filled with the word six,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to empower John James Dufour and his associates to purchase certain lands."

THURSDAY, March 18.

The Senate resumed the second reading of the bill for the better security of public money and property in the hands of public officers and agents.

Ordered, That the further consideration of this bill be postponed until Monday next.

Mr. COLHOUN presented the petition of Alexander Gardner and Thomas Pinckney, of South Carolina, praying compensation for two negroes, their property, stated to have been drowned in the public service; and the petition was read.

Ordered, That it be referred to Messrs. COLHOUN, BALDWIN, and BROWN, to consider and report thereon.

Mr. CLINTON, from the committee to whom was referred, on the 12th instant, the bill, entitled "An act for revising and amending the acts concerning naturalization," reported amendments; which were read.

Ordered, That they lie for consideration.

MARCH, 1802.

Proceedings.

SENATE.

On motion, that it be

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts to establish the judicial courts of the United States; and that the committee have power to report by bill or otherwise:

It passed in the affirmative—yeas 22, as follows:

YEAS.—Messrs. Anderson, Baldwin, Bradley, Brown, Clinton, Cocke, Colhoun, Ellery, T. Foster, Dwight Foster, Franklin, Jackson, Logan, Morris, Nicholas, Ogden, Olcott, Ross, Sumter, Tracy, Wells, and White.

Ordered. That Messrs. ANDERSON, BROWN, BRADLEY, NICHOLAS, and JACKSON, be the committee.

FRIDAY, March 19.

Mr. ANDERSON, from the committee to whom was recommitteed, on the 16th instant, the bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, reported further amendments; which were read, and in part adopted, together with further amendments to the said bill; and, on motion, to insert these words, section 16th, after the word "removal," "unless upon special cause to be certified by the commanding officer," it passed in the affirmative—yeas 12, nays 8, as follows:

YEAS.—Messrs. Bradley, Dayton, T. Foster, Dwight Foster, Logan, Morris, Ogden, Olcott, Ross, Tracy, Wells, and White.

NAYS.—Messrs. Anderson, Baldwin, Clinton, Cocke, Franklin, Jackson, Nicholas, and Sumter.

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to alter the times of holding the district court in the district of Maine," in which they desire the concurrence of the Senate.

The bill was read.

Ordered, That it pass to the second reading.

The Senate took into consideration the amendments yesterday reported by the committee on the bill, entitled "An act for revising and amending the acts concerning naturalization."

Ordered, That they be the order of the day for Tuesday next.

MONDAY, March 22.

The bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, was read the third time.

On motion, it was agreed to amend section 14, and strike out "eighteen" and insert "twelve;" also, to amend sixteenth section after the word "than," and strike out "three" and insert "five;" also, to strike out, after the word "removal," the words "unless upon special causes to be certified by the commanding officer;" and, in the last section, to strike out all the words after "operate."

Whereupon, *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act to regulate trade and intercourse with the Indian tribes, and preserve peace on the frontiers."

Mr. TRACY, from the committee appointed the 15th of February, on the Message of the President of the United States of 2d February last, reported, in part, a bill making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada; and the bill was read.

Ordered, That it pass to a second reading.

Mr. JACKSON, from the committee appointed the 9th instant, on the bill for the rebuilding of the light-house on Gurnet Point, at the entrance of Plymouth harbor, and for other purposes, reported amendments; which were read.

Ordered, That they lie for consideration.

The bill to alter the time of holding the district court in the district of Maine was read the second time, and referred to the committee appointed the 18th instant, on the subject of the judicial courts, to consider and report thereon.

Mr. BRADLEY notified the Senate that to-morrow he should ask leave to bring in a bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned."

TUESDAY, March 23.

The Senate took into consideration the amendments reported yesterday to the bill for rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor, and for other purposes; and having adopted them, together with further amendments to the bill,

Ordered, That it pass to the third reading.

A message from the House of Representatives informed to the Senate that the House have passed a bill, entitled "An act to repeal the internal taxes," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

The Senate resumed the second reading of the bill for the better security of public money and property in the hands of public officers and agents; and having agreed to sundry amendments,

Ordered, That the bill be recommitteed to Messrs. TRACY, NICHOLAS, and OGDEN, the committee who brought it in, further to consider and report thereon.

WEDNESDAY, March 24.

Mr. LOGAN presented the petition of John Hewson and others, calico printers, in the city of Philadelphia and its vicinity, praying Legislative encouragement in the prosecution of that business; and the petition was read and ordered to lie on the table.

Agreeably to notice given on the 22d instant, Mr. BRADLEY had leave to bring in a bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein

SENATE.

Proceedings.

MARCH, 1802.

mentioned;" and the bill was read, and ordered to the second reading.

The bill, entitled "An act to repeal the internal taxes," was read the second time, and referred to Messrs. BALDWIN, CALHOUN, FRANKLIN, COCKE, and CLINTON, to consider and report thereon.

The bill for rebuilding the light house on Gurnet Point, at the entrance of Plymouth harbor, and for other purposes, was read the third time.

Ordered, That the further consideration of this bill be postponed until to-morrow.

The Senate resumed the consideration of the amendments reported by the committee on the 18th instant, to the bill for revising and amending the acts concerning naturalization.

Ordered, That the further consideration thereof be postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill making an appropriation for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic; also, a resolution authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the second Monday in April next; in which bill and resolution, respectively, they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The resolution respecting an adjournment of the two Houses of Congress on the second Monday in April next was read and considered; and the further consideration thereof postponed until the ninth day of April next.

THURSDAY, March 25.

The bill making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada, was read the second time, and ordered to a third reading.

The bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," was read the second time, and referred to Messrs. BRADLEY, MORRIS, and TRACY, to consider and report thereon.

The Senate resumed the third reading of the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of New Castle Island; for erecting a light-house on Lynde's Point; and for other purposes;" which was further amended by adding these words to the amendment of the fifth section, after the word "dollars" in the first instance, "for making the surveys," and by filling the blank therein with the words "ten thousand;" also, the blank in the new section adopted, with the words "thirty thousand;" and by amending the title to be read as follows: "An act authorizing the erection of certain light-houses, and for other purposes."

Resolved, That this bill do pass as amended.

The bill making appropriations for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic, was read the second time, and referred to Messrs. NICHOLAS, BALDWIN, and ANDERSON, to consider and report thereon.

Ordered, That Mr. TRACY be on the committee to whom was referred, on the 8th of February last, the memorials of the merchants of the cities of Philadelphia, Alexandria, and Charleston, in place of Mr. HILLHOUSE, absent with leave.

The Senate resumed the consideration of the amendments to the bill for revising and amending the acts concerning naturalization; which were in part adopted; and

Ordered, That the bill be recommitted to Messrs. CLINTON, LOGAN, and SUMTER, the committee originally appointed on the bill, further to consider and report thereon.

Mr. TRACY, from the committee to whom was recommitted, on the 23d instant, the bill for the better security of public money and property in the hands of public officers and agents, reported further amendments; which were read.

Ordered, That they lie for consideration.

FRIDAY, March 26.

Mr. BALDWIN, from the committee to whom was referred on the 24th instant, the bill entitled "An act to repeal the internal taxes, reported amendments; which were read.

Ordered, That they lie for consideration.

The bill making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada, was read the third time; and after filling the blank with the words *ten thousand*,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada."

Mr. CLINTON, from the committee to whom was recommitted, on the 25th instant, the bill for revising and amending the acts concerning naturalization, reported further amendments; which were read.

Ordered, That they lie for consideration.

The Senate took into consideration the amendments reported by the committee, on the 25th instant, to the bill for the better security of public money and property in the lands of public officers and agents; which were further amended and agreed to.

Ordered, That this bill pass to the third reading as amended.

Mr. NICHOLAS, from the committee to whom was referred, on the 29th instant, a bill making appropriations for defraying the expenses which may arise from carrying into effect the convention between the United States and the French Republic, reported it without amendment.

MARCH, 1802.

Proceedings.

SENATE.

Ordered, That the further consideration of this bill be postponed to Monday next.

Mr. ANDERSON, from the committee to whom the subject was referred on the 18th instant, reported a bill to provide for the more convenient organization of the courts of the United States; which was read.

Ordered, That this bill pass to a second reading.

A message from the House of Representatives, by Mr. BECKLEY, their Clerk—

The House of Representatives have passed a bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine; in which they desire the concurrence of the Senate. They have directed me to bring to the Senate a statement communicated to the House of Representatives by the President of the United States, with his Message of the 17th ultimo; and to ask of the Senate, in exchange therefor, the roll of the persons having office or employment under the United States, which was communicated to them with a Message of the same date.

The bill last mentioned was read, and ordered to the second reading.

Ordered, That the Secretary do carry to the House of Representatives the roll of the persons having office or employment under the United States, as requested in the above recited message.

SATURDAY, March 27.

The bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine, was read the second time.

A message from the House of Representatives informed the Senate that the House have passed a bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of United Brethren for propagating the Gospel among the heathen;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to a second reading.

The Senate took into consideration the amendments yesterday reported by the committee to the bill to repeal the internal taxes; and the amendments were in part adopted.

On the question, Will the Senate adopt that part of the report of the committee which goes to strike out the eighth section of the bill?

It passed in the negative—yeas 8, nays 17, as follows:

YEAS—Messrs. Baldwin, Breckenridge, Clinton, Cocke, Colhoun, Franklin, Jackson, and Sumter.

NAYS—Messrs. Anderson, Bradley, Dayton, Ellery, T. Foster, Dwight Foster, Howard, Logan, S. T. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Tracy, Wells, and White.

On motion to amend the 8th section, to be read as follows:

And be it further enacted, That all persons who

shall, on or before the 30th day of June next, have any blank vellum, parchment, or paper, which has been stamped by the Superintendent of Stamps, and counter stamped by the Commissioner of the Revenue, and on which a duty has been paid to the use of Government, shall be entitled to receive from such Collector or Collectors of the Customs, or other revenue officers in the respective States or districts, as may be designated for that purpose by the Secretary of the Treasury, the value of the said stamps, after deducting in all cases *seventeen* and a half per cent.; and that the said officers are hereby authorized to pay the same: *Provided*, That the said blank vellum, parchment, or paper, be presented within four months after the 30th day of June next:

A motion was made to strike out "*seventeen*" and insert "*seven*;" which passed in the affirmative—yeas 21, nays 2, as follows:

YEAS—Messrs. Bradley, Breckenridge, Clinton, Cocke, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, S. T. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Sumter, Tracy, Wells, and White.

NAYS—Messrs. Baldwin, and Colhoun.

MONDAY, March 29.

Mr. BRADLEY, from the committee to whom was referred, on the 25th instant, the bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," reported amendments to the said bill, and further, that the committee are of opinion that any additional provisions in the act to promote the progress of useful arts are unnecessary.

The Senate resumed the consideration of the bill to repeal the internal taxes, and the amendments reported by the committee were in part adopted, together with further amendment.

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill making an appropriation for defraying the expenses which may arise for carrying into effect the convention made between the United States and the French Republic.

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill making a partial appropriation for the support of Government, during the year 1802, in which they desire the concurrence of the Senate.

The bill mentioned in the said message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. NICHOLAS, TRACY, and BALDWIN, to consider and report thereon.

The bill for the better security of public money and property in the hands of public officers and agents, was read the third time and amended, by striking out the third section, after the words "so much" the words "and no more, as near as may be." And in the same section, after the word "therefore," the words "as may be necessary,"

SENATE.

Proceedings.

MARCH, 1802.

and section fourth, after the word "given," by expunging the word "public;" and

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 24, nays 2, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Cocke, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Logan, S. T. Mason, J. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Sumter, Tracy, Wells, and White.

NAYS—Messrs. Bradley and Jackson.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act for the better security of public money and property in the hands of public officers and agents."

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

The Secretary of State, charged with the civil affairs of the several territories of the United States, has received from the Marshal of Columbia a statement of the condition, unavoidably distressing, of the persons committed to his custody on civil or criminal process, and the urgency for some Legislative provisions for their relief. There are other important cases wherein the laws of the adjoining States, under which the territory is placed, though adapted to the purposes of those States, are insufficient for those of the territory, from the dissimilar or defective organization of its authorities. The letter and statement of the Marshal, and the disquieting state of the territory, generally, are now submitted to the wisdom and consideration of the Legislature.

TH. JEFFERSON.

MARCH 29, 1802.

The Message and papers therein referred to were read, and committed to Messrs. MORRIS, S. T. MASON, and HOWARD, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of Isaac Zane; also, a bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" in which bills they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the 2d day of March, one thousand seven hundred and ninety-nine.

Ordered, That it be referred to Messrs. T. FOSTER, CLINTON, and TRACY, to consider and report thereon.

The bill for the more convenient organization of the courts of the United States was read the second time.

On motion, it was agreed that this bill be the order of the day for Thursday next.

The bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," was read the second time, and referred to Messrs. FRANK-

LIN, BRECKENRIDGE, and SUMTER, to consider and report thereon.

The bill for the relief of Isaac Zane was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to the committee last mentioned, to consider and report thereon.

The bill last mentioned in the message from the House of Representatives last recited was read, and ordered to the second reading.

On motion that it be

Resolved, That the Secretary of the War Department be requested to prepare and lay before this House a statement of the expenses actually incurred in support of the late Military Establishment for the last year, for which accounts have been rendered; and likewise, an estimate of the sums necessary to defray the first year's expenses of the present Military Peace Establishment:

Ordered, That this motion lie for consideration.

TUESDAY, March 30.

Mr. JACKSON, from the committee to whom was referred the resolution of the Senate of the 12th March, to inquire what further and more effectual means ought to be provided by law for the carrying the mail of the United States, reported a letter from them to the Postmaster General, and sundry letters and documents from the Postmaster General to the committee, in reply thereto.

Ordered, That the same be printed for the use of the Senate.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

The Secretary of War has prepared an estimate of expenditures for the Army of the United States during the year 1802, conformably to the act fixing the Military Peace Establishment; which estimate, with his letter accompanying and explaining it, I now transmit to both Houses of Congress.

TH. JEFFERSON.

MARCH 30, 1802.

The Message and estimate were read, and ordered to lie for consideration.

The bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," was read the second time, and referred to Messrs. J. MASON, TRACY, and ELLERY, to consider and report thereon.

Mr. ROSS presented the petition of sundry merchants of the city of Philadelphia, signed Thomas Fitzsimons, and others, praying relief from the operations of the act passed May 13, 1800, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" and the petition was read, and referred to the committee last mentioned to consider and report thereon.

The bill, entitled "An act to repeal the internal taxes," was read the third time, and amended, by striking out of section 1st, line 2d, after the word

MARCH, 1802.

Internal Taxes.

SENATE.

"next," the words "the collection of;" and section 2d, line 1st, after "and," by inserting "be;" and in line 2d by making the word "discontinue" "discontinued." And, after debate, the Senate adjourned.

WEDNESDAY, March 31.

Mr. NICHOLAS, from the committee to whom was referred, on the 29th instant, the bill making a partial appropriation for the support of Government during the year one thousand eight hundred and two, reported it without amendment.

Ordered. That this bill pass to a third reading.

Mr. FRANKLIN, from the committee to whom was referred, on the 29th instant, the bill for the relief of Isaac Zane, reported it without amendment. And on motion, the bill was amended, and ordered to the third reading as amended.

INTERNAL TAXES.

The Senate resumed the third reading of the bill, entitled "An act to repeal the internal taxes."

Mr. ROSS, of Pennsylvania, rose and said, he had not expected that bill to be called up for this day's discussion, and was of course unprepared to go into its merits with as much correctness as he had intended; but as the bill was now on its passage, he would make a few remarks. He said, whatever might be his conduct, were the laws laying the internal taxes now before the Senate to be passed for the first time, he had no hesitancy in opposing the repeal.

He was convinced that the public exigencies required the whole of our revenue, including these taxes, and that the future impost, and other revenues, had been overrated by the Secretary of the Treasury in his estimate. The sale of our Western lands had been charged as productive of the annual sum of \$400,000. He had many reasons for doubting that result, as the best of them were already sold, as money would become scarce in this country on the introduction of peace in Europe, and as agriculture would be less profitable with the peace prices.

Our expected neighbors, too, in Louisiana, and the Western Territory becoming an independent State, as was contemplated, might have an influence which could not now be foreseen with much certainty. Upon the whole, he thought the sum of \$400,000 much too high for that part of our revenue. He supposed the duties on impost and tonnage must suffer a considerable diminution from the introduction of peace in Europe, and wished, in a particular manner, that gentlemen would attend to the solemn pledge of these internal taxes, to pay the interest and principal of the public debt—especially the interest of foreign loans, referred to in the act passed March 3d, 1791, in which directions were given that a separate account of the duties on domestic distilled spirits and stills, &c., should be kept, to the intent that they should never be diverted. He adverted to all the laws laying and altering these internal taxes, and the solemn pledging of them for the payment of the interest and principal of foreign loans, and the promise to substitute other funds of

equal value, if these were diverted. He called upon gentlemen to justify, if they could, this flagrant breach of public faith, which was contained in the abolishing of these taxes without any substitute; and, on pretence of having made savings of public expense, which he declared would amount to little more than savings on paper.

Mr. MORRIS.—Mr. President, not having expected that this question would come on before to-morrow, I shall not be able to deliver my sentiments with the brevity and method I could have wished for my own ease and the convenience of the Senate. Though unwilling to trespass on their patience, I must entreat their attention to a subject highly important; more so, perhaps, than it has yet been considered. And I must so much the more solicit their kind indulgence, as I cannot hope to offer amusement, much less to convey instruction. It would, indeed, be vain to attempt to decorate logical deduction, or the meager results of arithmetical calculation. I shall, therefore, merely endeavor to recall to the recollection of gentlemen who hear me, the ideas which have already passed in their own minds; and I pray them to cast off, for a moment, all prejudice which they may have taken up, and go patiently along with me, into the fair investigation of those points on which the question turns.

I mean, sir, to comprise what I have to say under three heads:

1st. I shall, on general principles, compare internal taxes with those on the importation of commodities.

2dly. I shall examine how far we can rely for revenue upon the latter, supposing no frauds to be committed; and

3dly. I shall consider the danger to which that revenue may be exposed by smuggling.

First, then, let us compare internal taxes with duties on merchandise imported. And here let me premise, that in subjects of this sort there is no universal proposition. We must legislate on principles generally true, and be careful not to assume an exception as the ground of a rule, or believe that one solitary fact is sufficient to disprove conclusions drawn from the general state of things.

In the comparison now to be made, the first leading feature is the superior cheapness of internal taxes. This may seem extraordinary, and perhaps paradoxical, after what we have seen and heard of the expense of collecting them. On that expense, however, I must observe, in the first place, that, by extending this tax to a greater variety of objects, the collection will cost less in proportion to the amount; and, secondly, that although the sparseness of population in particular districts may prevent, as to them, an economical administration, yet this special circumstance, the effect of which must daily diminish, ought not alone to induce a preference for another general system.

Taking things as they are, let us place this question of expense on its true ground. By the cost of collection, I understand the difference between what the Treasury receives and what the people pay. If the necessary sums be (as an internal tax)

collected from the people immediately, they pay no more than what goes into the public coffers after deducting a certain per centage to the officers employed in the collection. But if the same sums be raised by duties on articles imported, it is evident that the merchant must take an advance on that part of his capital employed in payment of the duty, as well as on that which has been applied to the purchase and importation of the article. Where he received a credit for the duty this profit will be less in proportion to the length of that credit. The amount will necessarily vary according to a variety of circumstances; any hypothetical statement of it, therefore, to be tolerably accurate, must be so varied and diffused that we can better comprehend it as a logical proposition, than explain it as an arithmetical problem. The precise amount, moreover, is not essential to our present inquiry. The retailer purchases of the merchant with cash or credit. He of course pays, or engages to pay, the price; that is to say, the prime cost and charges (in which the duty is included) and the merchant's profit on both cost and charges: for these taken together constitute the merchant's price. After this, the retailer removes the commodity so purchased to the place where it is to be vended. It will be noted that in some cases articles pass through intermediate hands between the merchant and retailer, whereby an addition is made to the price, either as profit or as commission. But a consideration of these cases would render the inquiry too complex. Confining ourselves, then, to the simple transaction between the merchant and retailer, it is evident that when the latter has paid the price (including the merchant's profit on the duty) he must take a profit on the whole of that price, and on the charges he incurs for packages, freight, and transportation. In this profit he will of course include the interest of his own capital, or that which he pays to another for the use of money, or that which (in the shape of advanced price) he is bound to pay where he has purchased on credit. It is evident, also, that this profit must be sufficient to compensate him, not only for the employment of his stock, but for the labor and professional skill, by which he is to support himself and provide for his family. It is, therefore, equally evident that the advance must be great in proportion as the place in which he vends the goods is remote from that in which he made the purchase, and that it must increase when sales are slow, because a small profit often repeated is better than a large one which seldom recurs. On the whole, we may fairly conclude that the price of imported goods will be greatest in places most distant from the ports, and in those where (from the state of population or from other circumstances) the consumption is small. In such places, therefore, the duty will fall most heavily on the consumer.

It is proper, in this place, to distinguish between articles of mere luxury and those of real utility. It is of little consequence to the community that the luxurious should pay dear for the gratification of their appetites. It is indeed advantageous, because the high price of such things diminishes the

consumption, operating thereby as a regulation of police or sumptuary law. But the case is widely different when we come to articles of indispensable use, or those which long habit has rendered almost, if not altogether, necessary to the great body of the people. It is from such alone that copious revenue can be drawn. And with respect to them, it is clear that in the form of profit, to those who make successively an advance of the duty, the consumers pay much more than they would pay for the cost of collecting the same sum, by an internal tax, levied on the same articles at the moment of consumption. Let this cost then be extended, if gentlemen please, to ten or to fifteen per cent., still they will find that it is but light in comparison with the other. They will find, also, that those parts of the country most distant, and those which are least able to bear the public burdens, will pay far more than the wealthy and populous parts for collection of their quota. And it will perhaps command their particular attention, that inhabitants of the large cities will (in this mode of taxation) have a prodigious advantage over those at a distance. Finally, if it be objected that, for the internal taxes, we have hundreds of collectors appointed by the President, gentlemen must see that, for the duties, there are thousands of collectors, self-appointed. Let us not then be terrified by the idea of Executive patronage, for admitting it to be an evil, we shall find it to be unavoidable but by greater evil. The true question is (or ought to be) how the public necessities can be supplied with least inconvenience to the people.

There is another point of view, also, in which, on principles of sound policy, a preference is to be given to internal taxes. The collection of them keeps money in the country, whereas other taxes necessarily draw it away to the seaports, creating a distressful scarcity of cash in remote districts. Now there is nothing which tends so much to private economy as money dealing, for there is always more profusion where articles are procured on credit, than where they are paid for with cash. On the one hand, the consumer is more at the mercy of those who supply his wants; and, on the other, the trading part of the community is more exposed to loss from insolvency; and, as a result of both, the sum of national prosperity is diminished. It may be necessary perhaps to elucidate this position, and some others connected with it. Let us then take for an example the tax on distilled spirits; and to this effect let us suppose a district surrounding a large distillery, and trading with the manufacturer. The necessity of money to pay the tax will, by degrees, introduce money dealing between the distiller and the farmers. He will pay to these, in cash, for their grain, and they will purchase with cash the spirits they consume. Those not consumed will be sold by him, and the needful money be thereby obtained both to pay his tax and to support the commerce of the district. The farmer, having sold his grain, will purchase no more spirits than he wants, and will pursue his business so much the more steadily and cheerfully, as he finds for his produce a ready

MARCH, 1802.

Internal Taxes.

SENATE.

money market at his door. But if the tax be taken off and the former practice recur, so that the farmer must exchange his grain for spirit, he must either waste time in seeking a purchaser of the quantity he has beyond what he wants, or he must consume it himself. Taking the community in mass, there will happen a little of each, and the general result of both will be an excessive use of spirit, and a considerable waste of time, pernicious to individuals, and injurious to the State. I entreat gentlemen, then, to beware, lest mistaking the true interest of those they represent, like watermen who look one way and row another, they at each successive effort recede from the object they have in view. They contemplate a benefit to the interior country by this proposed repeal, which will produce a contrary effect. It will occasion great distress for the want of cash.

I foresee that I shall (before I have done) fatigue the patience of the Senate, and shall therefore, omit many observations which I have yet to make on this head. I trust however that, as a general proposition, the advantage of internal taxes over duties on importation, so far as concerns articles of necessary or general consumption, is sufficiently evident. But there is one point particularly applicable to our system, which must not be wholly forgotten. A long credit for the duties is, in many cases, given by Government. Let it not be understood, that I object to this facility afforded to your merchants. I know it to be proper, necessary, and beneficial to the community; but there is a result from it, which will not perhaps meet with general approbation. So far as this duty goes, Government furnishes to the merchant a capital on which to trade; and on this capital the merchant derives a profit from the people. A profit by no means so great, indeed, as if he had been obliged to pay the duty in the first instance; still, however, it is clear, that high duties involve the necessity of a credit (equivalent to an advance) by Government to self-appointed collectors of the revenue, from which they benefit at the public expense. This surely is no recommendation of the system. Let it not be understood, however, that I object absolutely to a duty on imports. This would be running into another extreme, and extremes are seldom either reasonable, just, or safe. But I contend that duties should be moderate, with a view as well to economy in the collection, as to the danger of contraband. I contend, also, that when a large sum is to be raised by a tax on consumption, it cannot be otherwise collected than as an internal tax, either with certainty, or with economy. Let me also observe, in this place, (what I ought to have mentioned before,) that I must consider the system, such as it shall stand after the repeal now demanded, as the system of the present Administration. It is as much so as if the whole were now about to be enacted; and it will not do for gentlemen to say, these duties were imposed by our predecessors, or by this, that, or the other class, set, or sect. They might have had some pretext (though not indeed any good reason) for saying so, had they left things as they found them; but the moment they make a change, the whole of what remains

is completely their own. The reason is evident, it is palpable. Every part is in their power, as well that which they take, as that which they leave. Their choice therefore decides.

I conclude here, sir, my observations on the first head, and proceed now to consider what reliance is to be made on the revenue, supposing no frauds to be committed. Before I go into the detail of particular calculations, I must pray to be indulged with the preliminary remark, that, during the late war, there has been an increased consumption of foreign articles, because the means of procuring them were increased. To show this, I must be permitted to observe, first, that (as a necessary consequence of the war) our merchants found a great demand for their ships, which, sailing under a neutral flag, enjoyed (though not without interruption) the rights of neutrality. Freights, therefore, being high, many ships were built, and the labor applied to ship-building and navigation advanced in price; secondly, from the same general cause, occasioning large demands for our produce, and particularly for provisions, a similar effect was produced on the labor employed in agriculture; and, thirdly, the dearth of labor in agriculture and navigation increased the price of that engaged in domestic manufactures. The profit therefore, to merchants, to manufacturers, to farmers, to labor of every kind, being great, each class of society was enabled to consume more of those foreign articles which were suited to its particular taste and inclinations. All this is evident, and requires no other proof than a reference to recent facts. But there is one circumstance which may not so immediately strike the eye of observation, and which is of leading importance to our present inquiry. This increase of means arose principally from abroad, and must cease with the change of exterior circumstances. Could it be wholly (or principally) attributed to an ameliorated condition of our interior circumstances and resources, it might be expected to continue, and continually to produce the same, or similar effects; but, depending on the war, with the war it must cease. This point may require elucidation. To bring it, therefore, distinctly within our mental view, let us select one imported and one exported article of general use. Let us, for the first, take cloth, and for the second, wheat. Six yards of cloth cost, in Europe, ninety-nine shillings sterling, to which may be added (for the proportion of packages) one shilling, making together one hundred shillings. To this is added in America, by law, as the probable expense and risk of transportation, ten per cent. An average taken, I believe, with sufficient accuracy and fairness, is ten shillings. The amount is one hundred and ten shillings. On which the duty is twelve and a half per cent., or thirteen shillings and ninepence. This brings the cost in a seaport to one hundred and twenty-three shillings and ninepence. If we add about ten per cent. for the merchant's profit, or eleven shillings and threepence, we have a total of one hundred and thirty-five shillings, or thirty dollars, being five dollars per yard, to which must be added about twenty per cent. to the re-

tailer. Hence it appears that cloth, which costs in Europe sixteen shillings and sixpence sterling, will be retailed in America for about six dollars. When wheat is, in America, at one dollar and a half per bushel, three yards of cloth (costing eighteen dollars) will be paid for by twelve bushels of wheat; but when the price of wheat is only one dollar, the same cloth cannot be purchased with less than eighteen bushels: and, on the other hand, when wheat, in Europe, is at six shillings sterling per bushel, the manufacturer can, with three yards of cloth, purchase more than eight bushels, but when the price rises to ten shillings, he cannot, with the same quantity of cloth, procure quite five bushels. Thus, on the interchange of the same specific articles, under the different circumstances of peace and war, the American farmer (in the latter predicament) saves six bushels on eighteen, and the European manufacturer loses more than three bushels out of eight.

Proceeding on this simple ground, we shall be enabled to take a more general view of the subject with equal perspicuity. To this effect, assuming cloth and wheat as representatives of our consumption and produce, let us suppose twenty bushels of wheat to be the average of our total export, and three yards of cloth to be the average of our total consumption of articles imported. If, on these assumptions, we consider the price of cloth to be about the same, both in peace and war, namely sixteen shillings and sixpence in Europe, and six dollars in America, and if we consider the peace price of wheat to be, in America, one dollar, and, in Europe, six shillings per bushel, and finally, if we consider the war price of wheat to be, in America, one and a half dollars, and, in Europe, we have these results:

1. As to America. In peace, twenty bushels of wheat sold at one dollar each, gives twenty dollars, and three yards of cloth purchased at six dollars per yard, cost eighteen dollars; leaving a balance gained to the country of two dollars.

But, in war, the same twenty bushels sold at one and a half dollar each, give thirty dollars; and the same three yards purchased as before for eighteen dollars, leave a gain of twelve dollars.

The difference, therefore, between the war and peace prices leaves an advanced gain of ten dollars, equal to one-half the produce at the peace price. Such is the result as to the husbandry of America.

2. In Europe, we have, in peace, twenty bushels of wheat sold for six shillings per bushel, which produce one hundred and twenty shillings, and three yards of cloth purchased for fifty shillings; leaving a difference of seventy shillings; which, after deducting the gain by the American husbandry of two dollars, or nine shillings, leaves a final balance of sixty-one shillings to those concerned in commerce, for commissions, freight, insurance, &c.

But, in war, the same twenty bushels at ten shillings will produce two hundred shillings. From which, deducting, as before, for cloth purchased, fifty shillings, there remains a balance of one hundred and fifty shillings; and, taking from

this the twelve dollars gained by the husbandry of America, or fifty-four shillings; there remains a final balance of ninety-six shillings to those concerned in commerce. But we have seen that this balance was in peace only sixty-one shillings. There is, therefore, in war, an increased gain to those concerned in commerce of thirty-five shillings.

Hence, then, it appears, that with the same produce, and the same demand for necessary consumption, the means of every order of our citizens have been greatly increased, by the contingencies of war, at the expense of foreign countries. Objections, I know, may be made to this conclusion, and instances may be adduced to support them; still, however, as a general proposition, it will appear to be true, and it is not contended for as an universal proposition. Adopting it, then, with all reasonable modification, let us now, sir, proceed to examine those statements of our commerce and revenue which the Secretary of the Treasury has laid before you. Among these I find a statement (in the table L,) of articles supposed to have been consumed annually during two distinct and successive periods; and, on this hypothetic ground, an estimate is made (according to an assumed rule of proportion) of the revenue to arise from the present duties for eight years to come. It appeared to me, sir, when I looked at the Secretary's report, that his mode of reasoning, (by supposition grounded on supposition,) however it might tend to elucidate propositions, could by no means serve as dialectic argument to arrive at truth. His conclusions may perhaps be just, but I cannot persuade myself that the ground on which they are raised is sufficiently solid.

In order to arrive at something more like certainty, I have endeavored, in the first place, to make estimates on facts, in so far as the documents he has transmitted would enable me. And I have taken the average annual consumption of articles and of duties payable on them, for the longest terms mentioned in the tables annexed to his report; because it appeared to me that the average of a long term was less likely to be affected by accidental circumstances than of a short one. I find, then, from the table marked A, that the amount of merchandise paying duty ad valorem for eleven years, is \$287,728,492. And I find, from the table marked E, in which the articles are classed according to the rate of duties on them, that a value of \$185,887,546 would, with the present duties, yield a gross sum of \$24,351,054. It may be presumed, therefore, that \$287,728,492, the value imported during eleven years, would have yielded \$37,692,089. If this be right, we have an annual average of \$16,157,135 value, paying a duty of - - - \$3,426,553

By the table A, the quantity of foreign spirits, consumed in eleven years, amounts to 55,475,505 gallons; by the table F, that 42,942,322 gallons paid \$12,227,719; we have, therefore, by the rules of proportion, annually, 5,043,227 gallons, and a duty of 1,436,047

MARCH, 1802.

Internal Taxes.

SENATE.

The molasses, by the same table A, is 46,809,917 gallons, or annually 4-255,447, which, at five cents, give -	212,772
The wine, by table C, is for six years, 12,470,657 gallons, which, at the present rates, would have paid \$4-374,743; this gives annually 2,078,443 gallons, and a duty of -	729,124
The tea, by table G, is, for eleven years, 28,548 pounds, which paid a duty of 4,190,184, being annually 2,545,504 pounds, and a duty of -	380,925
The coffee, by table A, for eleven years, is 73,827,542 pounds, being, annually, 6,711,595 pounds, at five cents, is	335,797
The sugar, by table A, is for eleven years, 391,653,372 pounds, being annually 35,604,852 pounds, at two cents and a half, is -	890,121
The salt, by table A, is for eleven years, 22,087,507 bushels, being annually 2,007,955 bushels, at twenty cents, is	401,591
The average of sundry articles in the table H, is for eleven years -	362,237
The average of the duty on tonnage and passports for the last three years of actual receipts, the accounts of which have been settled, is, by table I,	120,666
The gross amount is - - -	8,295,833
Deducting for collection three and eight-tenths per cent, or - -	315,241
There remains net - - -	<u>\$7,980,592</u>

I have taken the expense of collection according to the table I, which gives the precise amount during ten years. This differs a little from the rate assumed in the table L, which, as you will see, sir, is \$3 62 per \$100. According to this table, the net annual amount for six years, is taken at 8,350,000, being 369,408 more than the average of eleven years just stated. I shall compare the various items of these two accounts when I come to consider the probabilities of future receipt.

I have in my hand a detailed examination of the various articles contained in the table H, so as to ascertain, respecting each article, the relation of the general average for eleven years, 1790 to 1800, inclusive, to the special average for six years, 1793 to 1798, inclusive. I shall not at present, however, call the attention of the Senate to this detail, their time is too precious; but on some of the items I must say a few words by-and-by.

It will be observed, sir, that the general average of the net amount of duties and tonnage, for the longest period which the documents in our possession will enable us to examine, is something short of \$8,000,000. The Secretary has taken the net average of six years, 1792 to 1798, inclusive, at \$8,350,000, as appears by the table L; between that and a preceding period, he concludes there will be a future advance to the amount of above a million annually. I remark, however, that in the gross amount of duties in the last column of that table, viz: - - - \$8,663,000

There are sundry articles which I wholly omit. The first of these is an extra duty of ten per cent. on goods imported in foreign vessels, to which merchants will not, I believe, subject themselves without necessity; it is stated at - - - \$113,000

And for the same reason I omit the next article, resting on the same ground, which is - - - 43,000

The next is a supposed deduction on drawbacks, which can have no existence when the drawbacks cease, and there is little probability that they will in future amount to anything worth notice. The sum stated under this head is - - - 86,000

These deductions, taken together, amount to - - - 242,000

So that the gross amount, when stripped of them, will be but - - - 8,421,000

Which differs from the gross amount of the general average I have already detailed, only - - - 125,167

\$8,295,833

Let me observe here that, although it may have been proper to insert these articles for the species of calculation contemplated by the Secretary, they are wholly foreign from my view of the subject; for the Senate will recollect that my object is to consider the probable amount of duties to be collected in future, supposing no fraud to be committed. To this effect I mean to set out from the existent state of things, and under each distinct head, consider the chance of increase and decrease; comparing, as I go along, what I shall call the general average; that, for eleven years, with the particular average, by which I mean, that for the six years, 1793 to 1798. And before I begin with this detail, it may not be improper to observe, in gross, that the difference above noted, of about \$125,000, is not material. I had, indeed, taken, in another view, an estimate of the amount which I will not now detain the Senate to consider, but merely mention that it is somewhat less. On the whole, therefore, I feel myself justified in taking eight millions of dollars as a present ground on which to stand, in examining future probabilities.

The first article in the list is the duties ad valorem, which, like all the rest, except wine, is the average of eleven years, which amounts to - - - \$3,426,553

The particular average of the table L, is - - - 3,543,000

Making a difference of - - - \$116,447

On which I observe, in the first place, that this difference is nearly equal to that between our respective totals; so that those which exist between other items, nearly compensate each other. I must observe, in the second place, that many of the articles subject to this duty have been imported during the war, to supply other countries, and that for some of them the duty has not, from particular circumstances, been drawn back on exportation. I must, in the third place, observe, (recurring to the table A,) that, out of eleven years, the two of greatest import were the years 1796 and 1800; the year 1800 exceeds the general average above eight millions of dollars, and the year 1796 exceeds it above ten millions. In fine, the year 1796 exceeds the year 1800 two millions. It is therefore clear that this increased importation is not conclusive evidence of increased consumption; and therefore it should not be taken as an admitted point from which to deduce, by proportional estimate, the future probabilities.

Let me remind gentlemen, also, of the general principle already established; that a decrease of the means to purchase many articles of mere luxury, will, of course, diminish the consumption. And, let me add, that many such articles, on which the duty has already been paid, remain unsold. As to the rest, looking over the list which comes under this head, I see several, the importation of which will diminish from other causes.

There are various articles of glass ware, which pay twenty per cent. duty. We already have glass houses established, and if we do not now make this substance cheaper than it can be imported, the cause of that and of such other inabilities must be sought in the high price of labor. This price will fall. And let me here, sir, say a few words on that subject, because we are now entering a field, in many parts of which it must recur.

The high price of labor has a two-fold effect upon manufactures, to enhance the price. The laborer receives more wages, and he does less work. When in great demand, he dictates his own terms, and is more master than his employer, who is frequently obliged to overlook his negligence, lest reproof should drive him away. Enabled to subsist a week from the work of two days, he spends much time in debauchery; and when he returns is frequently incapable of performing his business. The high price of home manufactures, which results from these circumstances, operates inversely to decrease the quantity. The great demand keeps up the price of wages, and while wages are high and journeymen idle, they consume more and produce less than when, wages being low, they live in habits of industry and economy; they are also much less happy; and, however paradoxical it may seem, it is a truth vouched by experience that if they do not grow rich with low wages, they become with high wages miserably poor. While labor is so much in demand as it has lately been, the protecting duties, which many were inclined to rely on as the source of public prosperity, produce an effect contrary to that which was intended. The home manufactures are thereby diminished, and importations increas-

ed, of all which the consumer is the victim; but whenever circumstances shall, by lowering the price of labor, the price of produce, and the freight of ships, effect the radical cure of this evil, more hands will be engaged in manufacturing, because none but good husbandmen and good seamen will be employed in tillage and navigation. Add to this that a given number of manufacturers will perform more work, and thus the means of increase to our domestic manufactures being doubled, the proportion of our imports to our consumption must be reduced; so that, in many cases, notwithstanding an increased demand, there will be a diminished importation.

Let us, after this digression, return to the object we left. Not only the more high priced, such as flint glass paying 20 per cent., but window glass, which pays 15 per cent., will be manufactured in this country; for it will be noted that the difference, duty included, between the prime cost and the mercantile price of articles imported, which pay 20 per cent. will be about 45 per cent.; on those which pay 15 per cent. it will be about 39 per cent.; and on those which pay 12 per cent. it will be about 36 per cent. The importation to firearms, if it do not diminish, will hardly increase. Hats were made in America so well and so cheap, while we were British colonies, that it was thought proper to pass an act of Parliament, to lay restrictions on that business. The furs are in our country, and are carried thence to Europe; we have wool in abundance; the logwood is at our door. Can it then be supposed that the artists of Europe will long support their competition, when a hat which costs four dollars in Europe cannot be retailed here under six dollars? Copper, pewter, and tin manufactures are already made among us in great quantities. The importation of them will, I believe, diminish. Earthen and stoneware (at least those articles that come under that description) are so cumbersome that, even without a duty, they would be made at home; and it will not, I believe, be long before our industry shall embrace some of the finer sorts. Leather and manufactures of leather are at a price so great as cannot but excite surprise. Thirty years ago our manufactories of leather were in a flourishing condition. Neither the capital nor the skill are diminished. Our export of beef shows that our stock of hides has increased. Bark, also, we export, and the enterprising industry of our fishermen leaves no lack of oil. Why, then, should we be under the necessity of importing the coarser manufactures of leather? This can arise only from the common cause of so many other woes, the extravagant price of labor; a cause which soon must cease. Marble and stone will, I believe, be imported to very small amount. Stockings, mittens, and gloves, have long been made at home. What may be the future amount of those imported will depend, perhaps, on fashion. It will consist of the finer sorts. Paper hangings and cartridge paper can both be made at home; much of the former is consumed, and there can be no good reason why that consumption should not be supplied, in a great degree, without recurring to

MARCH, 1802.

Internal Taxes.

SENATE.

foreign shops. Glass bottles, anvils, hinges, hoes, and brushes, are among the coarse articles which must soon be exclusively made at home. Anchors and sail cloth will both be manufactured in America; not, perhaps, to great extent, still, however, the importation must diminish, even though our commerce should increase. American vessels will supply themselves with anchors, sails, and rigging, in Europe, on which at their return they pay no duty. The ropemakers, sailmakers, and riggers of the United States will feel the consequences; for which, however, there is no remedy but by taking off some of the duties. It may, perhaps, be objected that this practice has not hitherto prevailed. To which I reply, that, during the war, these articles being in great demand in the ports of belligerent Powers, and being contraband of war, so as not to be carried thither under a neutral flag, were dear. It was not, therefore, desirable for a ship to procure her outfit in such ports; but the peace will operate a total change in that respect. Linen and cotton manufactures are increasing daily, and when the price of produce diminishes, our fellow-citizens in the country must do more to clothe themselves, in proportion as their means of purchase from the store shall be curtailed. Our consumption of stationery will certainly increase; but whether the progress of our manufactures will be equal to that of the demand, depends on circumstances too minute for the present investigation. The last of these articles, which I shall notice, is gunpowder, the importation of which there is every reason to believe will daily diminish. Much of it was, I believe, during the war, exported in contraband, clandestinely, and, of course, without drawback.

Having thus gone through the tedious list of ad valorem articles, and noted such as seemed to require it, let us (before we proceed) look back and consider whether, under all circumstances, it be not highly probable that the duty on this class of articles will rather diminish than increase. I believe, sir, that if gentlemen have attended both to the general observations and the particular details, they must be convinced that, on the total, there will be a defalcation. This single article, however, amounts to near three millions and a half, out of eight millions. And it is on this article also that the increase appears to be the greatest from the first to the second period, which the Secretary has selected as the ground-work of his calculations, you will see, sir, by recurring to the table L, that the sums are as 25 to 35.

That which stands next in order is ardent spirits, the average duty on which is - \$1,436,047
The particular average in the table L, is - - - - - 1,475,000

Making an increase beyond the general average of - - - - - 38,953

With respect to this article in particular, I wish gentlemen to apply the observations already made on the means of expense in the several classes of our citizens. We have seen that our average import is not less than five million gallons. By re-

curring to the table A, we shall find that this import has varied much. The year 1793, for instance, stands charged with 700,000 gallons less than the year 1790. The year 1799 is charged with above two million and a half gallons more than the preceding or subsequent year. In a word, the quantity of 1799, exceeds that of 1793, by near four million of gallons. I mention these things to show that we should not take the average import, even of eleven years, as indicating a consumption regularly equivalent. But it is a fact, of public notoriety, that the principal consumption of imported spirits is along the seacoast; and that it has been greatly increased by the advance in the price of labor during the war. The cause ceasing, the effect must cease, and as habits of industry and sobriety prevail, that source of revenue will dry up. If, however, we should be mistaken in our hope as to the public morals, there is a further reason why it would be imprudent to count on a million and a half of dollars from the importation of ardent spirits. When labor and produce fall in price, the domestic manufacture of that article must become more beneficial, and the consequent diminution of its price will necessarily exclude (at least among the poorer classes) the use of foreign spirits. The art of distilling is rendered every day more perfect. Already certain kinds of spirit are prepared which are preferred, even by the rich, as articles of luxury; and there can be little doubt but that in a few years this will become one of our exports. The internal duty which operated (though in a feeble degree) to preserve a balance between domestic and foreign spirits is, by the act now before us, to be repealed. This very act, therefore, will operate against that part of the revenue. I ask, then, Mr. President, whether, under all these circumstances, there be any reasonable hope that this branch of our revenue will increase? Is there even a slight probability that we shall continue to derive one million and a half of dollars from the importation of ardent spirits?

The next article on our list is molasses, the general average of which, during eleven years, has been - - - - - \$212,772
The particular average by table L, is - 191,000

21,772

leaving a difference of above twenty thousand dollars annually of decrease.

You will observe, sir, by the table A, that the quantity of molasses imported has decreased since the year 1790. The consumption of that and the succeeding year was twelve million gallons. In the year 1799 and 1800, it was but seven million six hundred thousand, making a difference of four million, four hundred thousand, or two and twenty hundred thousand annually. By looking at the table B, we shall find that a great part of the molasses formerly imported was distilled into spirits; but this manufacture has gradually declined. In the year 1790, we find a consumption of 2,305,461 gallons of spirits distilled from molasses, and in the year 1791, 2,536,037.

SENATE.

Internal Taxes.

MARCH, 1802.

Making for those years - - -	4,841,498
But the consumption in 1799 and 1800 is only - - -	1,889,864
	<u>2,951,634</u>

being a difference of near three millions.

We shall find that the consumption of molasses in kind has been about three million of gallons annually. I observe, then, in the first place, that though our importation may have been diminished, either by the difficulty of procuring that article in the country where it is produced, or the facility of obtaining one of more value, brown sugar, there is another cause of the same effect, namely, that spirits distilled from domestic materials have supplanted those distilled from molasses. We ought, therefore, to combine the import of spirits with that of molasses. And if this be done for the three years 1790 to 1792, and for the three years 1798 to 1800, we shall find by table A, that in the former period the spirits amounted to, gallons - - - 12,326,406
And the molasses to - - - 16,269,367

Making together - - -	28,595,773
But in the latter period, though the spirits are - - -	16,736,977
The molasses are but - - -	<u>11,685,588</u>

Making together only	28,422,565
	<u>173,208</u>

The two periods differ but little, yet that little shows a diminished consumption of the foreign article. This took place while the price of labor and that of grain were high, and while the duty on domestic spirits kept down the competition. I again ask, what hope is there that this part of our revenue will increase?

The next article is wine. The average of the duty for six years, 1795 to 1800, by the table C, is - - -	\$729,124
And the average for six years, 1793 to 1798, by table L, is - - -	714,000
The difference is but - - -	<u>15,124</u>

By recurring to the table C, we shall find that from the year 1795 to the year 1800, the importation has declined; for the first three years it amounted to, gallons - - - 7,619,278
And in the last, to but - - - 4,851,379

Making a difference of - - -	2,567,899
------------------------------	-----------

Or, annually, above 850,000 gallons.

This diminution may, perhaps, arise from a change in the manners of those who consume that article; for it is, I believe, a fact that, among the wealthier order of citizens, the pleasures of the social board are not so often as in former times extended to the vicious excess of inebriation. Perhaps, also, the art of manufacturing wine among us, is better understood and more practised. Be that as it may, believing as I do that the means of sustaining the expenditure will be rather diminished than increased, I do not think we can

count on any considerable advance in this part of our revenue.

The tea imported during eleven years was, we find by the table G, 28,000,548 pounds, which, at the present duties, would have yielded \$4,190,184. This gives an average quantity of 2,545,504 pounds, paying annually - - - \$380,925

The average quantity for the six years, 1793 to 1798, by the table L, is 2,175,694 pounds, supposed to pay a duty of \$326,000. But this duty is calculated on an average rate taken on the whole quantity, which, applied to that particular part, is too high; if calculated on the actual kinds and quantities, it amounts only to - - - 314,514

Which, deducted from the former, leaves	<u>66,411</u>
---	---------------

Thus, the difference between the average duties for the whole period, and that selected by the Secretary, will be above \$66,000. So great an apparent decrease requires examination. I have, therefore, divided the whole term of eleven years into three different periods, namely, the first three, the next five, and the last three years; and I have averaged the consumption of each particular kind of tea, not only for the whole term, but for each of those distinct periods. I find that, in the whole term, the average consumption of—

Bohea, is	1,858,558 lbs.,	paying \$223,027 duty.
Souchong, is	272,988	" 40,136
Hyson, is	216,413	" 69,252
other Green, is	197,544	" 39,509

Being a total	2,545,504	" 380,924
---------------	-----------	-----------

But, in the first period, from 1790 to 1792, inclusive, the average consumption of—

Bohea, is	1,722,194 lbs.,	paying \$206,663 duty.
Souchong, is	197,185	" 35,493
Hyson, is	251,270	" 80,406
other Green, is	45,100	" 9,020

Being a total	2,215,749	" 331,582
---------------	-----------	-----------

In the second period, from 1793 to 1797, inclusive, the average consumption of—

Bohea, is	1,778,863 lbs.,	paying \$213,463 duty.
Souchong, is	214,716	" 38,649
Hyson, is	131,528	" 40,161
other Green, is	107,532	" 21,506

Being a total	2,232,639	" 318,779
---------------	-----------	-----------

In the third period, from 1798 to 1800, inclusive, the average consumption of—

Bohea, is	2,127,749 lbs.,	paying \$255,329 duty.
Souchong, is	445,916	" 80,264
Hyson, is	323,030	" 106,569
other Green, is	500,005	" 100,001

Being a total	3,396,700	" 542,163
---------------	-----------	-----------

MARCH, 1802.

Internal Taxes.

SENATE.

Thus, we find a regular though small increase in the consumption of Bohea tea; and an increase as regular, but more rapid, in the consumption of Souchong. That of Hyson seems to have fluctuated, still, however, the increase has been greater than that of Bohea. But it is the article of Green tea (other than Hyson) which has made the most rapid progress. We find it rising from forty-five thousand in the first period, to one hundred thousand in the second, and to five hundred thousand in the third, being nearly equal to one-fourth of the Bohea. In this article, we trace distinctly the effect of those increased means of consumption so often mentioned. They have, we see, extended over a great part of society the use of an article of expensive luxury. It is probable that, by the diminution of those means in future, the further extension will be limited; there can, however, be little doubt that the use of tea (generally speaking) must increase. If, therefore, this branch of the revenue should decay, it will not be from a defect of consumption.

The next article is *Coffee*, the average of which, during eleven years, is 6,711,595 pounds, paying, at five cents per pound. - \$335,797

The average estimate for six years, by the table L, is 7,351,665 lbs., paying 867,000

Making a difference of - - 31,203

Before I notice this article in particular, I must take the opportunity to observe, in general, that (like other things the produce of the West Indies) the consumption has been much increased by the peculiar cheapness, arising from circumstances which have now ceased to exist. It is notorious, sir, that we have, during several years, been the place of *entrepôt* for these commodities, which have been brought hither to be afterwards distributed throughout Europe. Of course they have been cheaper than they can be in future. And it is further to be observed, that, for a year to come, very little will be brought to us, because the price will naturally rise in the places where they are produced, and fall in those where they are consumed, from the simple consideration that they may now, at small expense and risk, be transported from the one to the other. It must, from that circumstance, happen that the article of sugar, for instance, will be worth near as much, for export to London, in Jamaica as in New York. This being the case, merchants who have a stock on hand, will find their best market at home; and until that stock shall be consumed, will not seek a fresh supply from abroad. We may consider, therefore, the next year's revenue on these articles as little or nothing. It is true that the defalcation will not immediately be felt, because the bonds for preceding years falling due, part duties will be in a train of collection; so that advances and deficiencies being spread through a greater space of time will have a more equable effect. When I speak of the cheapness of these articles, I must not be misunderstood. I do not, in a national point of view, apply that term to the money price. Money is but the counters by which the

commercial game is scored, or the figures by whose aid calculations of traffic are made. The real price is the quantity of labor or of produce required to procure the merchandise. And when it is an article of luxury, this further consideration enters into the price: What is the amount which, after the purchase of necessaries, may remain for the gratification of appetite? When labor is at half a dollar per day, or three dollars per week, and board at two dollars, there will remain weekly for clothing, &c., one dollar. But when labor is at one dollar per day, and board at three dollars per week, there will remain three dollars weekly. If, in the former case, one dollar be employed for clothing, washing, and other necessary expenses, and, in the second case, two dollars, there will still remain in this case one dollar for articles of luxury. And the same reasoning applies alike to produce and to labor. After this digression, let us return to the article: We find, sir, by looking at table A, that the consumption has been variable. The average of the three last years, 1798 to 1800, is 7,462,233 pounds, being 750,000 pounds more than the general average; but, in the three first years, 1790 to 1793, it was only 3,836,391 pounds, being 2,875,000 pounds less than the general average. Finally, we shall find the average of the three first and the three last years, taken together, to be near 5,650,000 pounds. Now, it is not, I think, probable, that the consumption of the country will, for some time to come, exceed that quantity. If so, the revenue from it ought not to be estimated above 287,500 pounds, instead of 415,800, the amount relied on by the Secretary; that is to say, an advance of three-sixteenths on 367,000, the amount of the duty by the table L, for the years 1793 to 1798, inclusive. I am the more strongly of this opinion, sir, because it is notorious that during the late war our export of coffee has been very great, and because, on looking at the table A, we find that, although our excess of import in the year 1795, was 14,674,726 lbs. Yet the next year there was an excess of export amounting to 5,526,269

9,148,447

Leaving for the excess of imports on those two years little more than nine million pounds.

The next article is sugar, our average consumption of which by the table A, is 35,604,852 pounds, and the duty at two and a half cents is \$890,121. The average estimate of the table L, is 36,149,665 pounds, and the duty at the same rate is \$903,000. The general observations on the last article will apply to this also. For the same reasons which have been adduced as to coffee, we must doubt the conclusions drawn from both the general and particular average of the consumption of sugar; and we shall find by inspecting the table that the years 1797 and 1800 stand charged with above one hundred million pounds. The year 1799 is alone charged with more than fifty-seven million. The years 1797 and 1799 amount, together, to 106,847,381; the years 1796 and 1798 amount to but 58,609,976. Finally, if we take the amount of the seven years, 1790 to 1796, we shall find the average

SENATE.

Internal Taxes.

MARCH, 1802.

to be 28,723,137. At the end of that period, as at the end of every other during the war, there must have been a considerable stock on hand; so that the average thus found will probably exceed the actual consumption. If on the one hand, it be assumed, that the increase of population will call for a greater quantity, we must, on the other hand, consider the probable decrease of our means to purchase; and making proper allowances both ways, we shall find, perhaps, that thirty million pounds of brown sugar, yielding at two and a half cents seven hundred and fifty thousand dollars, is as much as can safely be relied on. The Secretary however estimates an advance of three sixteenths on nine million three thousand dollars, making one million and seventy-two thousand dollars, which implies an annual consumption of more than forty million pounds.

The last article, specified in the table L, is salt, the average consumption of which for eleven years, by the table A, is 2,007,955 bushels, yielding at twenty cents \$401,591; the six years' average stated in the table L, is 2,210,942 bushels paying \$442,000. The consumption of this article has certainly increased (a thing which was indeed expected) but this increase has not been, I believe, equal to the expectation. For the future it cannot advance even as it has done before, nor by any means in proportion to our population, because, in the first place, those who live beyond the mountains find a plentiful supply among themselves, cheaper than it can be imported; and because, in the next place, those who live on this side of the mountains will, as the country becomes more populous, require a smaller proportion of salt. Gentlemen may at first view think this proposition paradoxical, but let them consider that when the number of inhabitants in a given district is sufficiently large to consume fresh beef, during the warm season, so that the butcher can keep up a constant supply, less salted meat will be used. It is true that our export of beef, pork, and fish, will increase, but the revenue will not be benefited by that circumstance. On the whole I incline to think that this article will suffer no diminution, and it may perhaps be relied on for the expected amount.

We then come to sundries, as specified in the table H. The general average of eleven years by that table is a revenue of \$362,237. The special average of table L, is but three hundred and fifty-two thousand.

I will not, sir, detain the Senate by a particular examination of all the articles in this table, although I have prepared notes for that purpose. Even as to those to which it may be proper to call their attention, I shall briefly state my idea of the future, without dwelling particularly on the reasons; for it is growing late, and I fear much that your patience will be exhausted.

Beer, ale, porter, and cider, yield on the general average \$21,305; on the particular average \$24,053; leaving \$2,748.

We import no cider, and the decrease of the price of grain and of labor will probably enable our brewers (who have already brought their art to

great perfection) to supply all our wants of beer, ale, and porter.

Cocoa yields, on the general average, \$19,070; and on the particular average, \$16,768; leaving \$2,302.

As an article of luxury, the consumption will not much increase.

Candles paying two cents per pound, yield on the general average, \$1,288; on the special average \$2,309; leaving \$1,021.

The imports of this article will probably cease, as we export the materials from which it is made, and the quantity will increase with that of salt beef.

Cheese, paying seven cents per pound, yields, on the general average, \$12,089; and on the particular average, \$15,652; leaving \$3,563.

If, sir, we may judge by a great instance (of public notoriety) there can be little doubt but that our cheese-makers will largely supply our wants.

Soap at two cents per pound, yields on a general average, \$9,348; and on the particular average, \$5,654; leaving \$3,664.

This also must decrease as well as the revenue from candles, and from the same cause, for we export fat, tar, and lixivial salts. But I cannot help observing, in this place, that the tax on soap and candles falls heavily on the poor in our large cities. They must consume these articles, which differ in that respect from ardent spirits, and even from coffee, bohea tea, and brown sugar. Let it not however be understood, sir, that in anything I have said, or anything I shall say, it is in the remotest degree my intention to call for a comparison between different articles on which the weight of taxation may fall. The members of the other House, being more immediately representatives of the people, are perhaps better acquainted than we are with the wishes and feelings of our constituents; and whatever may be my private opinions, I shall (from deference to them) presume that they have consulted those feelings and wishes. These indeed ought to be consulted, for it is of consequence that the public burdens be borne not only with ease, but with satisfaction. I do not say that where the people wish for anything which I believe to be pernicious that I would grant it, even in compliance with the will of their immediate representatives. No, sir, it is our duty in such cases to oppose firmly our reason to their will. We owe ourselves to the public—we owe our time, our labor, and our lives. Nay we have a heavier debt. We owe it to the people to incur their displeasure for the promotion of their good. Neither the love of their applause, nor the fear of their censure, should lead us to swerve for a moment from the straight path which is pointed out by reason and duty. Under these impressions of what we owe to the other House, to those whom they represent, and to ourselves, I shall confine myself to the expression of regret, that more attention was not paid to the necessities of the poor who dwell in our cities. They form indeed but a small part of the community; but while we are so busy in taking off the taxes which fall on useless or pernicious expense, through the vast extent of our territory, I wish there had

MARCH, 1802.

Internal Taxes.

SENATE.

been some sentiment of commiseration for those who pay more than twenty per cent. advance on articles so necessary as soap and candles.

Tobacco is the next article which I shall notice. At ten cents per pound it yielded on the general average, \$4,899; on the particular average, \$2,962; leaving \$1,937.

The greater part of what we have imported came, I presume, in the shape of Havana cigars; and that port being now shut against us, the importation will probably diminish, if it does not wholly cease. The sooner the better.

The general average of loaf sugar at nine cents per pound, is \$7,847, and the particular average is \$3,720; leaving \$4,127. This shows a diminution of more than one-half, but if we examine the table H, we shall find that the average import of the three years, 1790 to 1792, was 208,540 pounds; that of the six years, 1793 to 1798, was but 41,337 pounds; and that of the two years, 1798 and 1800, only 11,711 pounds.

If the internal duty on this article be taken off, there can be no doubt but the regular importation must cease, and of course the duty.

Cotton has, I find, yielded, by a duty of three cents per pound, on a general average, \$17,406, and on the particular average, \$29,805; leaving \$12,459.

As this article forms one of our principal exports, I cannot suppose that much will be imported. The greater part of what has been collected on it, has, I presume, arisen from the circumstance that it was not an exportation entitled to drawbacks.

Nails and spikes have yielded at two cents per pound, on a general average, \$60,788, and on the particular average only \$50,116; leaving \$10,672.

These are among the principal articles of the table H. I shall dismiss them with a single observation. As a large quantity is made in America, notwithstanding the high price of labor, when the price of labor falls that quantity must increase. The duty is at least twenty per cent. and the packages, freight, and transportation, are great compared with the value. Importations must therefore decline, notwithstanding an increased demand.

Hemp is the next and most considerable article of this table; it amounts, by the general average, at a duty of twenty dollars per ton, to \$63,847, and by the particular average to \$70,434; leaving \$6,587.

In addition to what has already been said, when anchors, sails, and sail-cloth, were under consideration, (which I shall certainly be excused from repeating,) it will be recollected that this is an article of American produce. Much labor being required in preparing it for market, the culture is necessarily limited by the hands to be procured, and the expense attending them. It must also be recollected that, in remote districts, as the price of grain declines, hemp and flax will be cultivated, because they can better bear the cost of transportation. From all these reasons it is evident, that this source of revenue must dry up in no distant

period. The duties on hemp, nails and spikes, form one-third the amount contained in table H.

Cables and tarred cordage, paying a duty of thirty-six dollars per ton, yielded by the general average \$15,681, and by the particular average \$14,545; leaving \$1,137.

I will not repeat what I have this instant said about hemp, but I will add, that while, by this duty, we mean to encourage the domestic manufactures at the expense of our navigation, we, by the duty on hemp, discourage the manufacture, but still at the expense of our navigation. Giving thus to agriculture and manufactures such advantages over navigation, we must not be surprised if those concerned in it redress themselves by fitting their vessels in foreign ports. I will not dwell on this subject, but simply remind the Senate that it is no light or trivial matter so to apportion taxes, as to conciliate the jarring interests of society, and produce the greatest possible sum of public prosperity. It requires much cool thought and calm reflection. It is not to be expected from sudden measures, hastily dictated by partial views.

The articles of twine and packthread, produced by the general average \$6,256, and by the particular average \$5,860, leaving \$396, are only mentioned for the purpose of observing, that with a duty of nearly four cents per pound, on an article of such trifling value, there can be no doubt but that our demand will soon be supplied by domestic manufacture.

I shall say nothing of the duty on coal, except that in so far as it is an article of domestic use, the duty falls heavily on consumers, exclusively to be found in large cities; and that, in so far as it is employed in manufactures, the duty is a discouragement of what the Legislature wished to promote. The amount (either thirteen thousand or nine thousand dollars, according to the different periods) is by no means sufficient to counterbalance the disadvantages which result from it. Much coal is used in the coarse manufactures of iron, and it is these, which (of all others) we ought specially to encourage. As there is nothing more generally felt than the high price of iron wares, so it has ever been the object of wise Governments to reduce that price, by every just mode not inconsistent with greater interests.

The duty on shoes, at fifteen cents per pair, produced about twelve thousand dollars annually, and I find by the table a regular increase of importation, the duty notwithstanding—leather shoes, within a dozen years past, have risen to nearly the double of their former price. Fifteen years ago, they were made in this country as cheap according to the quality, as in Europe; but now, with a duty near fifteen per cent. on the real value, importations have increased. Here again we find the ill effects flowing from a high price of labor. They have probably caused this protecting duty to impede the progress it was intended to promote. But from the moment that a fall in price or diminution of the demand (compared with the supply) shall introduce, among our workmen, those habits of industry and economy which high prices have banished, the importation must cease; and unless I

SENATE.

Internal Taxes.

MARCH, 1802.

am greatly mistaken this period is not remote. I have now, sir, gone through the tedious detail of all these articles. There remains only the duty on *tonnage* and *passports*, which I have taken at \$118,723, and the Secretary of your Treasury at \$108,000, making a difference of about 10,000 less than my estimate. As our shipping (much of which has been employed in carrying on the commerce of other nations) will now lose that business, and of course be confined to our own, it will exclude, in a great measure, all foreign bottoms. If so, the foreign tonnage duty must decrease, and our own navigation will, I apprehend, be for some time to come rather stationary. I cannot, therefore, suppose there will be any advance in this branch of our revenue.

And now, I pray gentlemen to look back and consider the various items of the account we have gone over. Will they not be convinced that, if some few articles should remain as they are, or even if one or two of them should increase, yet many others must inevitably decline, and that all the change to be expected from our growing population, will be counteracted, in a great degree, by the decrease of means to purchase foreign luxuries, and still more by the increasing resources and productions of our domestic skill and industry? Can we, I ask, expect that the duties will rise from eight millions to nine and a half? Can we expect that they will long continue even at eight millions? I know, sir, that the deficiency will not immediately be felt. Our Treasury is full. Large sums are still due for the late abundant harvest of revenue. These will supply the ensuing want, so that one or two years may elapse before we awake from the dream of fallacious prosperity. We shall not the less, however, experience a serious diminution of the public income. This event must happen, even if these duties, on which we so vainly rely, should all be regularly and honestly paid; but will that be the case?

This leads me, sir, to the third point with which I proposed to trouble you, and I proceed to consider how far the practice of smuggling may endanger a revenue dependent on high duties. I shall perhaps be told that the merchants of America disdain the vile practice of smuggling, and that no danger on that ground is to be apprehended. I believe, sir, that I duly appreciate, and I am sure that I greatly respect the honor and integrity of our merchants. Much I know is due to their patriotism, much to their regard for the Government under which they live, something perhaps to their friendly sentiments for those by whom it was administered; but the commerce of America is not exclusively in the hands of Americans. I know not of any law to prevent foreigners from settling among us and engaging in trade. What common interest, what common feeling have they with our fellow-citizens? By what principle are they bound to support the credit, maintain the honor, or advance the dignity of our Government? What is it to them that our revenue should fail? Why should they wish to strengthen systems under which they neither expect nor wish to live? In coming hither they seek gain, and, if successful, carry the

honey they have collected to their own hive. Men of this sort, leaving their homes in pursuit of profit, easily find out the left-handed road to fortune. If money is to be got by smuggling, they will smuggle; and the practice once begun, will extend itself, and must at last become general. I say it *must*. The fair trader cannot exist, when driven to a competition with the dealer in contraband. Imagine to yourself a merchant with a store full of goods which he cannot sell but on ruinous terms, and who sees in his neighbor a rival prosperous by illicit means; will such a merchant, when bankruptcy stares him in the face, when the wife of his bosom and the children to whom he is a father look up to him in vain for bread, will he refuse to follow the pernicious example? Can he resist? No, it is not in nature. These strong feelings of the heart will hurry him away. Bind him as you may by oaths and vows, he will, he must break them. He cannot tear from his bosom all the charities of life. It is possible that, in spite of temptation, and with the certainty of ruin, some few instances should remain of unbending principle; but the great mass will undoubtedly fall. The only question then for a legislator is how far the practice will be profitable, or, in other words, what is the proportion between the benefit and the risk.

It has happened to me, sir, in travelling along the coast of Flanders, to learn (both at Dunkirk and Ostend) some facts which may throw light on this inquiry. I select one as the most apposite. Before the commutation act was passed in England, the smuggling of tea in that kingdom was brought to so regular a system that, for a fixed premium of twenty per cent. on the valued invoice, smugglers undertook to deliver specific chests of hyson tea at any place named in the city of London; and failing in the delivery they paid the amount. I have chosen this article, because (the bulk compared with the value) it furnishes a standard tolerably accurate for the average rate of merchandise. The next point is to consider the dangers to be encountered or eluded. The coast of England is stormy and of difficult access. In one season of the year, the approach is dangerous from physical causes, in other seasons there is great risk of discovery, by the numerous cruisers and revenue cutters. In either case, when the goods are landed, new dangers arise, from a host of excise officers, who have a right to examine every package. The country, moreover, is open and highly cultivated; so that the means of concealment are unfrequent. Compare these circumstances with those of our own country. Without noticing the unlimited means of illicit trade in possession of small fishing vessels to the eastward, a single glance at our coast from Cape Hatteras to Cape Cod, is sufficient to show the superior facility of approach. Along the coast, from the beginning of May to the middle of August, vessels may ride at anchor in perfect safety. Innumerable inlets offer to the smuggler a safe retreat. Already flat-bottomed vessels ply between some parts of this country and the West Indies. These can run into water too shoal for your revenue cutters, even if

MARCH, 1802.

Internal Taxes.

SENATE.

they were sufficiently numerous to interrupt illicit trade; but did they like the fleets of Britain cover (as it were) the ocean, still they could not interrupt the adventurers; and when smuggling vessels once enter the inlets, should revenue officers attempt a seizure they will be resisted. The people in the neighborhood, deriving advantage from a concern in that business, will join in resisting. Will you quell them? Where I ask, is your military force? You have none! And if you had, what would it avail you? Look again at that extensive coast, see it clothed with vast forests of pine, which, proud of their sterility, bid defiance to the hand of cultivation. See those impenetrable morasses, whose paths are known only to those who inhabit them, and which are intersected by deep creeks with endless variety. Send regular troops of imbodied militia into this region to enforce your revenue laws; they will meet there a race of men bred from infancy to the use of arms and subsisting in no small degree from the chase. Dangerous marksmen, they will support the wastefulness of savage war by the resources of civilized man. Where the practice of smuggling obtains, you have no means of preventing a breach of your laws, but by repealing them. Straining at too much you will lose all. You hastily throw off a small burden now, and you will soon be obliged to take one up which is far more heavy. In the meantime, this country of order, of peace, and happiness, will become the theatre of violence and confusion. The morals of our people, already impaired, will be wholly prostrated. Where all will end is not easy to conceive nor even to conjecture.

But these, it will be said, are illusions of fancy; let us see whether they be not the cool deductions of impartial reason. To this effect I shall beg leave slightly to notice those articles, which, from their bulk, their value, and the amount of duty, will fall properly within the province of the smuggler. Among those which pay twenty per cent. duty are steel springs, coach, and chariot glasses, looking glasses, and cut glass. Of articles paying fifteen per cent., there are plated ware, jewelry, buckles, buttons, clocks, watches, gold and silver lace, China ware, paste work, harness, pocket books, powder flasks, and sundry other articles of leather, raisins, prunes, spices, many cabinet wares, essences, perfumes, dentifrice, bonnets, hats, gloves, silk stockings, lace, ribbons, fans, and other articles of millinery. Finally, among the articles paying twelve and a half per cent., are whips and canes, cambrics, lawns, gauze, silks, chintzes, and muslins. Every gentleman who hears me, must perceive, that each article in this long list will pay for the expense and risk of smuggling. Nova Scotia, the Bahamas, the West India Islands, perhaps the Floridas, will be filled with them, and furnish a constant supply. Pursuing our former track, we come (after the articles paying a duty ad valorem) to ardent spirits. The duty, in a document I have before me, is stated to be seventy per cent., it certainly is above fifty per cent. The very lowest is twenty-five cents per gallon, which gives twenty-two dollars for a hogs-

head of ninety gallons. It can be smuggled for half that sum. Suppose the expense of smuggling, like that of tea into England, were as high even as twenty per cent., there would still remain a profit of above thirty per cent. to the adventurer, can the fair trader meet him on the ground of competition?

The duty on wines, according to the same document, is for small claret in casks, St. Georgio, and other wines of the Western islands, except Teneriffe, one hundred and twenty-five per cent, but were it only half that amount it is more than sufficient—on the best Madeira it is fifty-eight dollars per pipe of one hundred gallons—and it is notorious that for a much smaller sum the duty may be evaded.

The duty on Bohea tea, from India, is twelve cents; it can be imported and sold to a profit for twenty-five to thirty cents; of course the duty amounts to full half the value. On other black teas it is eighteen cents, equal to about one-third the value. On Hyson, thirty-two cents, equal also to near a third; and, on other green, it is twenty cents, which is more than half. Thus, on teas in general, the duty is from one-third to one-half the value. Compare this with the duty in England, which was but one-third; see the consequence in that country, notwithstanding the most jealous care of a vigilant Government, with the peculiar advantage that all licit importation was by a single company and in a single port; then judge of the consequence in this country. It goes to a length you are not aware of. It must, in the end, deprive your merchants of their trade to China. The vessels fit for that commerce are too large for illicit trade, and I repeat it again, the fair trader cannot, where duties are so high, compete with the smuggler. The trade must be abandoned, and the profits of it go into foreign hands. In the Dutch, in the Danish islands, magazines will be filled with teas of inferior quality; your people will purchase them at a high price, the State will lose the revenue, the merchant will lose his business, and the citizen will be obliged to consume articles of inferior quality.

The duty on coffee and on brown sugar is near fifty per cent. These articles are produced in our neighborhood; they are usually brought in small vessels; there cannot be the slightest difficulty in the clandestine trade; it not only will, but it must, (nay, it is almost impossible that it should not,) take place: and, if refiners of loaf sugar are established in our neighborhood, that article also will find its way among us to the exclusion of our domestic manufacture, the repeal of the internal duty notwithstanding. There is one article, playing cards, with which we are already inundated from Canada; and the high price is sustained, although the revenue is defrauded.

Let gentlemen, then, look at the consequences. They complain of the number of officers employed in the collection of direct taxes, but it has been shown that a still greater number is employed in collecting the duties, and now it appears that a great addition must be made (even to that number) for the purpose of defrauding the Govern-

ment, while they collect from the people large taxes, no one dollar of which is to enter the public Treasury. Gentlemen wish to favor the interior country at the expense of the seacoast, and their measures will render the interior tributary to the very worst of those who live along the shores of the ocean. Neither will the merchants who carry on an illicit trade derive from it all the advantage which the public lose. Look, I pray at your northern and southern frontiers; see upon the north the most commercial nation on earth; the nation which has most capital, and certainly not the least enterprise; they are separated from you by a long line of water communication, which invites to contraband. On this quarter you can have no means either of prevention or of detection. The merchants of Canada will supply with articles, highly dutied, the whole Western world. Nay, many such articles will, from the facility of communication in the United States, find their way from the St. Lawrence, to the head waters of the Carolinas and of Georgia. To the smugglers of Canada, then, will your citizens pay that tax which they wish to withhold from their own Government. Let it not be understood that I mean to cavil at the particular articles which the majority of the other House have selected. This, as I said before, I leave to them; nor shall my wishes lead either to objection or to complaint. But if, on the consumption of these articles, you persist in raising such large sums, it must be, in part, by an internal tax. Take a moderate share as duty; take what the trade will bear, and what the merchant can pay; take what will give no temptation to fraud; and take the remainder in the only way by which you can get it; take it in the way least burdensome to the people; take it in the way most equal and most just. Let the burden fall in due proportion upon all. Imitate the operations of nature. Let exhalations be drawn from an extended surface, and then fall back to the earth in prolific showers and refreshing dews.

Mr. MASON, of Virginia, said he would not occupy much time, as he concluded every gentleman had made up his mind. He thought the gentleman from Pennsylvania, Mr. Ross, ought to vote for this repeal, if he would now oppose the first institution of internal taxes. Necessity was the only ground which could justify the imposition of taxes; and, at any time, when such necessity ceased to exist, it would be proper to abolish. If the people saw the Government disposed to lighten their burdens, they would cheerfully submit to taxes in future. He acknowledged it would be difficult to ascertain the result of things in respect to our revenue on commerce, but believed it would keep pace with our increase of population. Drawbacks would now cease, and all our imports would realize a revenue. Depredations had injured us during the European war; they would now cease. He acknowledged that the high prices of our produce increased our means of consumption, but thought gentlemen had not sufficiently attended to the corresponding high prices of foreign articles. Coffee, sugar, and West India pro-

duce, he thought, would fall, as much, or nearly as much, as our own produce. He said, gentlemen could better attend to the Secretary of the Treasury's calculations and statements at their lodgings, than here in debate, and believed it best to stick to the Secretary's report, rather than to calculations of anybody else. It was not important or relevant to prove what kind of taxes were best, it was enough that we could do without these, which were odious to the people, and many of them vexatious, such as the stamp duty, &c. As to smuggling, he did not think we were much in danger of it, unless the art should be learnt from the gentleman's (Mr. MORRIS'S) speech, who had proved that if it was not moral, it was at least venial to smuggle. The carriage tax, he thought, was unconstitutional. Gentlemen in opposition had triumphantly brought forward the appropriation, and the pledge of these taxes to pay the interest of foreign loans, and, in general, the interest and principal of our national debt; he considered this but a pledge, which we had good right to withdraw, if we had a sufficient sum of other funds pledged to answer all the demands. He considered the savings made already in our current expenses, would release a sufficiency of other funds, to stand in the place of the internal taxes, and justify us in abolishing them.

He thought gentlemen were too tenacious to keep in office their friends; he did not condemn the principle of respecting faithful officers who had left other business to serve the public, but he thought, in this instance, and in every instance this session, when an attempt was made to reduce the number of useless officers, that the opposition were more attentive to the good of those officers of their own creation, than they were to the good of the people, which seemed not to have much weight with them. Upon the whole, he had always considered these taxes as unwise, when laid, and oppressive in their operation; they were the darling child of the first Secretary of the Treasury, who had declared, that excises were forced upon the people in other countries, and that they should go down here. They were, he believed, very obnoxious to the people, who expected those whom their confidence had placed at the head of their affairs, should destroy them; and as he believed it could be done without hazarding our public faith, especially if we economized as we ought in our expenses, he should vote for the repeal.

Mr. TRACY.—Mr. President, I intended to offer my sentiments, upon this subject, more at large than my present strength will enable me to accomplish. But I regret this circumstance the less, since my honorable friend from New York, (Mr. MORRIS), in his able argument, which was yesterday offered to the Senate, has done so much justice to this important subject.

Without any knowledge of his calculations, I had adopted his mode of ascertaining that a defalcation of our impost and tonnage duties would be the unavoidable consequence of the present state of affairs in the United States and Europe.

I am strongly impressed, sir, with the idea that if gentlemen will permit themselves to give the

MARCH, 1802.

Internal Taxes.

SENATE.

calculations and arguments of my honorable friend a candid attention, the result will be a conviction of their force and importance; and that, as far as demonstration, upon such a subject, can be obtained, he has succeeded in demonstrating that our import and tonnage duties will decrease, and of course will not alone be sufficient to meet the public exigencies.

Permit me, however, to bring into view a few points in the same train of argument, which have either not been mentioned at all, or not urged so far, as their importance will justify.

The first question which will occur, when we contemplate the repeal of laws imposing taxes, is, can the public requisitions be met and satisfied without them? To answer this question with propriety, let us cast our eyes upon the expenditures, which are indispensable for eight years to come.

I assume the period of eight years, because within that time our Dutch debt will all fall due, and our eight per cent. stock, will become redeemable.

The statement will be as follows:

Interest and reimbursement of six per cent. stock	- - - - -	\$26,802,896
Interest and reimbursement of Dutch debt	- - - - -	10,647,672
Interest on three per cent. stock	- - - - -	4,579,129
Interest on other loans, as per Treasury statement	- - - - -	5,395,414
Payment on bank loans	- - - - -	2,740,000
Payment of bank per cent. stock	- - - - -	6,480,000
Interest on $5\frac{1}{2}$ per cent. stock, not included in Treasury statement, for two years	- - - - -	203,225
Interest on $4\frac{1}{2}$ per cent. stock	- - - - -	13,534
Interest on navy stock, 5 years	- - - - -	213,510
Making in the whole a total of	- - - - -	57,075,580

Divide this total by eight and the sum will be found to be \$7,134,447 50 cents, which, in each of the successive eight years, we must pay, to fulfil our public obligations. When I say must pay, it is strictly true in respect to all the above items, excepting the eight per cent. stock, but as that is on an interest so much higher than any other part of the public debt, I presume Government will feel an obligation sufficiently strong to pay it off as soon as it becomes redeemable.

To this sum of	- - - - -	\$7,134,447 50
We must add as annual expense,		
civil list	- - - - -	780,000 00
Foreign intercourse	- - - - -	200,000 00
*Expenses of navy	- - - - -	900,000 00
Expenses of army	- - - - -	1,100,000 00
Making in the whole, a total annual expense of	- - - - -	10,114,447 50

* The current annual expenses are taken from the last and lowest estimates; if any increase in army or navy expenses should happen, these estimates will fall short.

for eight years to come. To which must be added the contingent expenses, which experience has taught us, must and will occur in the most peaceable times; such as expenses to carry into effect treaties, &c., &c., to the annual amount of one of or two millions at least. During this year, the French convention, and a recent one with Great Britain, have made a serious call upon our Treasury, and at all times the sum must be considerable, which prudence will dictate should be kept in the Treasury to satisfy contingencies.

For the payment of this annual sum of \$10,114,447 50, with the probable contingencies, what are our means? If these internal taxes are abolished, we must resort to the sales of Western lands, produce of the Post Office, and dividends on bank shares, as the only aids of any amount to our imposts and tonnage revenue. And although I do not believe the sum of \$400,000 a year can be expected from the sale of lands, for the reasons offered by the gentleman from Pennsylvania, (Mr. Ross,) and although it is doubtful to say no more of it, whether we shall not expend all the income of our Post Office in the extension of roads, and other incidents to the Post Office itself, yet I will take the sums calculated by the Secretary of the Treasury to arise from those sources.

Annual sales of lands	- - -	\$400,000
Do: produce of Post Office	- - -	50,000
Dividend on bank shares	- - -	71,000
Making in the whole a total of	- - -	521,000

If this sum is deducted from our annual expenditure, it will leave \$9,593,447 50, which must be paid by the duties on impost and tonnage, or not at all, together with all contingencies. Is it probable that the net produce of our revenues, arising from impost and tonnage will amount to the sum of \$9,593,447 50, for each year, during the period of eight years? The answer to this question it must be acknowledged, cannot be mathematically accurate; but it is presumed, that a tolerably correct estimate may be made. Here, sir, I avail myself of the calculations and arguments of my honorable friend, (Mr. MORRIS.)

Consumption must form the basis of our revenue by imposts. And as I believe the maxim to be just, that for a given number of years, no people can consume more of foreign articles than they can pay for, the diminution of means, owing to the lower process of our own products, &c., must diminish consumption. The increase of population will certainly increase home manufactures; labor which has been turned to account, to aid our remittances for imported articles, will of course now be turned to manufacturing; and the very act of repealing the laws laying internal taxes, will lower the price of domestic spirits, loaf sugar, &c., and a resort will be had to them, at the expense of impost on similar imported articles. The six per cent. and other stock of this country, have been articles of remittance, which source must in a measure be dried up, if Europe shall remain in peace.

The article of imported salt, forms an important item in our table of impost. In the statement of the Secretary (marked O) there is stated to have been 2,734,243 bushels of foreign salt, imported into the United States, in the year 1800, upon which a duty of twenty-five cents per bushel was paid, amounting to \$546,848 60. All this sum will very soon be taken from our impost, the people at the eastward, are now manufacturing sea-water into salt, with so little labor, and with such success, that I am convinced they can, in a very little time, afford it for less than the ordinary freight from the West Indies. I mention this article of salt, because it is at present an important article of impost, and because I verily believe it must soon cease to be productive; and particularly because I conclude the circumstances of its very successful manufacture, and the facility which with incalculable quantities can be made, have not obtained general notoriety. Can any man with a view of this state of facts, in addition to those mentioned by the gentleman from New York, believe that our impost can be as productive as it has been during the war in Europe? I think not. It is true, that for a year or perhaps eighteen months, the sum of receipts at the Treasury may not be sensibly diminished, by reason of the duties heretofore having been secured by bond and payable in future. But when we take into consideration the very heavy duties on coffee, tea, and brown sugar, which have only been supported by the favorable state of things, arising to this country from its neutrality, during an unparalleled war in Europe, can we be justified in supposing such duties can be supported in time of peace, and consumption suffer no diminution?

And if consumption suffers no diminution will not the revenue be diminished by smuggling articles into a country so favorable to smuggling; and on which the duties are so high as to offer a good premium for the risk? Especially when many articles are highly dutied, and are of great value and small bulk. The gentleman from Virginia (Mr. MASON) supposes that my honorable friend (Mr. MORRIS) has instructed the adventurers of this country in the art of smuggling; he may rely upon it, that the art is in good forwardness, and stands in no need of instruction; the allurements of high duties is too great not to be understood, especially when an extensive coast, unguarded in almost every part, invites to practice. When contemplating this subject, very many facts will crowd themselves upon the mind, tending to a conviction that our revenue by impost must decrease.

I forbear to mention the uncommon supply of dutiable articles on hand; the probability that mercantile enterprise has brought many goods into the country from the expectation of drawback, and from a variety of circumstances, exportation has taken place without the drawback; and many other events similar in their effects, because this Senate are under no necessity of information on such obvious points, and because they have been already urged in this debate, with great force and conclusiveness.

If it be objected, that the result of all this must leave the mind in doubt, and that demonstration is not yet obtained; I ask, if we ought to run the hazard of giving up our internal taxes, if the event is only doubtful? Under such circumstances, is a sober, cautious Legislature justified in taking a step like this?

We have tried the experiment of internal taxes; the obstacles of collection are all or nearly all surmounted; and the people, as far as my information reaches, are becoming reconciled to them; add to all this, it is at least doubtful, whether we can as yet dispense with them, with safety to our public faith. It is now a time of peace, and measures already by law adopted to pay off the national debt, can better now than at any other time, be enforced. I should believe we ought to extend the system of internal taxation, rather than abolish those taxes already established. At any rate, is it politic to adopt this repeal, before experiment shall have informed us what the state of our impost will be in time of peace? It has been said the national debt was an enormous evil, and that to pay it off the people would submit to almost any temporary burdens. When peace has visited the world, and we are in prosperous circumstances, when our internal revenue can better be increased than at any time, for many years past; when our expenses have been and are to be, we are told, lessened in every respect; why should we lose sight of an object so desirable as that of increasing the means of extinguishing the public debt, by calling forth all the energies of the nation, for replenishing our Treasury? Instead of this we are to repeal the system of internal taxation, trust our whole revenue to the winds and the sea, and every other casualty to which human affairs are exposed. The Secretary of the Treasury himself, does not calculate upon a greater sum than nine millions and a half for the annual product of the impost. I think it has been shown, that the amount will fall far short of the sum; but allowing that sum to be realized, still our means will fall short of the necessary expenditure, the sum of \$93,447 52 annually. How are we to get along with such a deficit? and this too with no allowance for contingencies. The answer is plain, our debt must accumulate, or some of our necessary institutions must suffer. This suffering I fear will fall upon our navy, and leave our commerce literally to the winds. If we permit these taxes to remain, and experiment shows hereafter that we can do without them, the repeal can be had at any time; but once repeal them, and what is to be the result, if experiment shows we cannot do without them? Can they be revived? No man will pretend a revival to be practicable. Such a measure would shake its revivers from their seats in both Houses of Congress. After the people have once been told by a Legislative act, and that after an Executive recommendation, that the product of the internal taxes are not wanted, it will be a hard matter to convince them that a necessity exists for their revival. If they can ever be peaceably collected, it must be by resisting the unfounded opinion now, that they can safely be abandoned.

MARCH, 1802.

Internal Taxes.

SENATE.

Permit me now sir, to make a few observations upon the general subject of internal taxes. I know it has been said, that excises are odious to a free people, and that a part, at least, of those now to be abolished are peculiarly odious. In addition, it has been said, that the cost of collection is very great, and a useless number of Executive dependants are employed as excise officers. I believe all pecuniary impositions are, and always will be, unpopular; but making a reasonable allowance for that general disposition to part sparingly and reluctantly from our money, I believe that a free people can better pay a part of the support which they must afford to the Government, by way of excise, than to pay all by impost. And for this plain reason, because, they can pay by excise much cheaper or with less cost for collection, than by impost. To avoid all dispute on the cost of collecting our internal revenue, let it be set at fifteen per cent., or if you please at twenty. I ought to say here, that by a judicious extension of the objects of stamps, excise, &c., I have no doubt but our internal revenue could be collected for five per cent., probably for less.

But, say it cost fifteen or twenty per cent., does not our impost collection cost much more? The cost of collecting any tax is precisely that sum, which the people pay, more than the sum which is actually paid into the Treasury. Or, to make my position plainer: if one hundred and fifteen dollars are paid by those who use stamped paper, parchment, and vellum, in one year, and the expense paid to officers, &c., is fifteen dollars, then one hundred dollars is the net revenue, and fifteen dollars the cost of collection. Or, in other words, if one hundred dollars are paid by all those who ride in pleasure carriages for one year, and after deducting all expenses of collection eighty-five dollars are paid into the Treasury on account of that tax, then the cost of collection is fifteen per cent.

One thousand dollars worth of goods are imported, of the kind which are duties at ten per cent. *ad valorem*; the duties to be paid into the Treasury by the importer are one hundred dollars. The importer pays this sum, but, after deducting collector's fees, &c., the sum paid into the Treasury upon these goods, is but ninety-five dollars. Then the public have received on one thousand dollars, ninety-four dollars. Let us see how much the consumer of these goods pays for collecting the duty. The importer has paid one hundred dollars, on this sum he puts his profit, when he sells the goods, say twenty per cent., that will make the addition for the consumer to pay, and it is easily discerned, that the sum will be one hundred and twenty dollars; the retailer (if there be but one more purchaser before the consumer, but in many instances there are two or three) puts on twenty-five per cent. when he sells to the consumer, which will be thirty dollars more; making in the whole one hundred and fifty dollars paid by the consumer, when the Treasury receives but ninety-five dollars. The difference between ninety-five dollars and one hundred and fifty dollars, amounting to fifty-five dollars, is the sum which the duties on

one thousand dollars worth of imported goods costs for collection. When there are no duties, the consumer would receive this one thousand dollars worth of goods for one hundred and fifty dollars less, and all the merchants concerned would receive the same or a proportional profit. The public receives but ninety-five dollars, and for this consideration the consumer pays fifty-five dollars, which is certainly the cost of collection; and that is between fifty-seven and fifty-eight per cent. That those who live in the interior of the country pay more than those on the sea-coast, for collecting the impost, is obvious, from a well known fact, that the goods pass through more hands before they reach the consumer, all of whom will put on a profit.

If these statements are correct, is it not demonstrated that the imputation on excises, for the great cost of collection, is unfounded? In case of excise, the consumer pays but one officer for collection; in the case of impost, a great number must be paid. Are there four or five hundred officers of excise all of whom are checked by law? There are thousands of officers of impost, a great proportion of whom are under no legal restraint. It is fallacious to flatter ourselves that there are but fifty or sixty officers of impost whose fees are limited; there is a host of them, self-created and under no limitation. The question may readily occur, what then shall be done? The answer is easy, regulate your impost, let the duties be reasonable, to avoid smuggling, and so reasonable as not to prevent consumption; increase your excise in objects and sum, and let both proceed together, and a greater sum of revenue, than heretofore, can be raised, and with less oppression to the people. This was the system of those who have been in power, and it will force itself upon those in power, or they will be forced out. Unless your excise is kept in co-operation with your impost, the latter will become intolerable and inefficacious. Especially when an attempt is made to raise by it so great a sum as will be requisite for our national exigencies. That a dangerous Executive patronage is established by the appointment of excise officers, is to me an assertion so contrary to my knowledge of the facts, that I can scarcely believe it deserves a serious answer; but to preserve decorum in debate, my reply to that objection against internal taxes is, that so far as I am acquainted with the subject, the Executive has rather been weakened, by the appointment of those officers; and I can discern no prospect of a dangerous accumulation of power, from the appointment of excise officers, and before I will consent to remedy an evil, I must be convinced that an evil exists.

It is objected further against excises, that the system of espionage and oaths resulting from it, is destructive of the peace of society and of morals. Mr. President, I will not detain the Senate to hear a detail of facts upon these subjects; but I have searched the statutes respecting impost and excise, and believe if any man will do the same, it will be found that espionage and oaths are more dangerously produced by the former than the lat-

ter. The truth is, that Government implies force on the one part, and obedience on the other; and it is easy to discern in its most favorable operations that a clamor can be made against it, especially that necessary part which takes from the people money to support it. No system of taxation under heaven can be carried into effect, without coercing the immoral, and sometimes bearing hardly upon inability itself; suffice it to say, that excises are as unexceptionable in their nature as any mode, and for a country like ours, probably the most unexceptionable.

I hope no member of this Senate can be actuated in his vote upon this subject by any engagements to his constituents—that at all hazards the internal tax should be abolished. I cannot believe any member is under such engagements; if there should be any, I am confident that silence to him will be as efficient as argument. But we are told, the members of the Legislature are not at liberty to act themselves upon this occasion; that the Executive message at the commencement of the session has already, in effect, repealed the laws laying these taxes, and that a collection of them, after the people have been told by the President that they are not wanted, is impracticable. We are told further, that the same opinion is entertained in our financial department. As to the last, if a candid attention is given to the report of the Treasury Department, no recommendation to abolish the internal taxes can be found, but rather a contrary opinion seems to be indicated.

I acknowledge, and with regret, that the President has been unequivocal, and presume it will have great weight with the people, thinking, as I do, that the effects will be pernicious. I can but say, that the closet philosopher is more discernible in this recommendation than the politician. I accuse no man of acting upon this occasion with undue reference to popularity; if it be possible that such a motive could be indulged even for a moment, I am convinced that the time is at hand, when not a rock or mountain can be found in the sterile field of popularity, to hide such an one from the wrath of those very people whom now he thinks to flatter.

The time will arrive, and that speedily, when our public exigencies will require additional revenue. Can you rely on a land tax? Can you increase your impost? Can you reinstate the internal taxes? To all these interrogatories the answer is, no!

I hope I am mistaken in the consequences which I predict, as I sincerely wish this country may prosper in peace and quietness. Were I actuated by party motives only, I should rejoice at this measure. Let the internal taxes go, and you that abolish them, prepare to go with them, for "be ye also ready," is stamped upon the measure in characters too legible to be mistaken. This, it will be remarked, is spoken in reference to a firm belief, that we cannot support our public faith if we abolish these taxes. But, sir, I hope and believe my motives are above all party considerations. How long I am to continue in life I know not. I

am admonished by ill health of its frailty; but, sir, I am fully convinced of the fatal tendency of this repeal to the happiness of this rising country; therefore it is, that I oppose it, regardless of any popular, unfounded opinions, which may seem to militate against excises or internal taxes.

The solemnity of the pledge which has been made of these taxes, by the laws originating them, is worthy of observation. They have been pledged for the redemption of the public debt, and every creditor of the United States has an interest in the pledge, which cannot be trifled with. The gentlemen who favor the repeal say, that although true it is, these taxes were pledged, yet we have a redundancy of funds which are likewise pledged, and therefore to withdraw the internal taxes can be no breach of faith.

I am free to acknowledge, Mr. President, that our funds can be in such a condition; for instance, should we proceed successfully for eight years in extinguishing principal as well as interest of our debt, there would then remain no Dutch debt, and a large portion of the principal of our domestic debt would be paid; in such case to say no funds however redundant could, consistently with good faith, be released, because originally pledged till the whole debt was paid, would in my mind be unreasonable. But if my calculations are correct, or anywhere near it, we have no right to presume on a present redundancy of funds, and the obligation contained in the appropriation of these internal taxes, recurs with all its force and solemnity against the repeal. When we take a view of the state of Europe, still agitated, though tending to a state of quietude; the condition of the West Indies, and the condition, as it speedily will be, of Louisiana; when all calculations of revenue from impost are so uncertain as to amount, and the expenses which await us still more uncertain; especially when we look at the Barbary Powers, I ask gentlemen not to give away a source of revenue already productive, and which may be easily made more productive, and not to run the hazard of violating our public faith, when a few years, perhaps a few months, may place us in a situation where certainty may be obtained.

The tax upon pleasure carriages, upon loaf sugar, and that of stamps, are so beneficial to the public, and fall so lightly, if at all, upon the laboring and poorer classes of people, that I should reluctantly give them up; and I am strongly impressed with the idea, that the tax on domestic distilled spirits and stills, is calculated to promote morality, as well as to raise a revenue. In a word, sir, I believe policy and national faith unite in rejecting the repeal.

Mr. JACKSON, of Georgia, said he considered the internal taxes as impolitic and iniquitous when laid; the New England States paid no excise on their orchards, as cider was not taxed; but all the orchards at the southward were, which consisted chiefly of peaches; this was unequal, and of this the people at the southward complained. He believed the recommendation of the virtuous Jefferson was sufficient authority to act upon in repealing those laws. Besides, the savings we had

MARCH, 1802.

Internal Taxes.

SENATE.

made already, in the reduction of the army, would amount to a greater sum than the whole amount of the internal taxes. [Here Mr. Jackson turned to the estimates of the army expenditure for 1801, and stated that more than \$900,000 was saved by that alone.] The gentleman from Connecticut (Mr. TRACY) has asked us, said Mr. J., where can we resort for taxes if we should be mistaken; and by this repeal there should be a deficit of revenue? I can tell the gentleman we can tax stock of all kinds, bank stock, and all other stock. I see not why great estates, made in a moment by speculation, should not bear a part of the public burdens, the holders are now like drone bees, sucking honey out of the hive, and affording no aid in its procurement. This is my opinion, and I care not who knows it.

Mr. TRACY said he could inform the honorable gentleman from Georgia, that the New England orchards were taxed, as great quantities of cider were annually distilled into brandy, so that the inequality suggested by the gentleman was ideal, and not founded in fact. He said further; he had expected, if the internal taxes were abolished, that the same principle which had done this, would lead the gentleman to tax the funds, as this would be a certain and easy way to pay off the public debt. But he acknowledged, after all the professions of those in power, to treat public credit in a cautious and sacred manner, he did not expect, so soon, an avowal of those principles.

Mr. DAYTON, of New Jersey, said he was astonished that such assertions were made to the Senate, as fell from the honorable gentleman last up, (Mr. JACKSON,) respecting the savings by the late reductions of the army. The utmost that could be pretended, was not more than \$200,000, he believed not \$100,000. The Secretary of War had said, in a very definite manner, that the saving might be \$500,000, more or less; but when an estimate is made for an establishment, an army for instance, the army is supposed to be full; and an allowance is also made for losses and contingencies; every gentleman in the Senate knew that the actual expense paid for our army in 1801, would exceed but a little, the annual sum which must be expended this year? What have we done? said Mr. D.; a few soldiers and a very few officers have been dismissed, and it is mocking to the public and deceiving ourselves, to pretend such great savings have been made by this reduction of the army.

Mr. ROSS was sensible, the more this subject was examined the more reason would be discovered for gentlemen who favored the repeal, to retract their opinions. There was an express engagement, under all the solemnities of a law of the Government, that the taxes on stills and domestic distilled spirits, should forever be appropriated, while a debt existed, to the payment of that debt and the interest upon it; and that there should be no power to repeal this pledge without substituting other adequate funds to those removed. This is represented in all the successive laws on this subject, which places the obligation in a more striking point of view. Now gentlemen say we

will repeal the whole at one stroke, and substitute what? Nothing.

The Government have received loan after loan, and repeated promise after promise; yet, upon the spur of the occasion, they retract all their promises, or repeal the laws which contain them; and seem to suppose such conduct will have no influence on public credit. What would, he asked, be the case of an individual who thus trifled with his creditors? What will our creditors at home think, and especially creditors abroad? This debate is in the presence of foreign Ministers, and the declaration goes forth to the world, that the Government of the United States will revoke its promises, however solemnly made, *ad libitum*; and this, because new men have come into power, who say, We have money sufficient to pay our debts, and what signify pledges! We did not make them; let those who made them look to them. No, sir, said Mr. R., our credit is gone if this bill passes; no man will trust you again; you may withdraw future pledges as well as these; and I would not trust a cent to the engagement of such a Government. The present majority have gone on repealing, till we have almost nothing left to repeal. These duties are solemnly pledged, and if you can abolish them, without a substitute, I repeat it, your national faith is violated, it is gone, it is not worth a cent. A gentleman, high in point of ability and standing in his representative capacity, (Mr. JACKSON,) tells the Senate that the public creditor may be taxed. [Here Mr. J. said it was a sentiment of his own, and he repeated it.]

Mr. R. said, let us examine it; instead of paying the money you borrow, you tax your creditor a given sum annually, till it is all swept off, and call this a payment of debts, and sacred preservation of public faith. He said he did not own any stock of any kind, and believed he never should, in this situation of public affairs; therefore, he was interested only to establish public credit for the benefits it would afford to Government itself.

Mr. ANDERSON, of Tennessee, said he could not conceive why gentlemen should lay such stress upon appropriations, inasmuch as our other funds were sufficient to make good all our engagements.

Mr. MORRIS.—Mr. President, the gentleman last up has brought forward in full, and the honorable member from Virginia, (Mr. MASON,) in part, a very extraordinary argument. And yet the gentleman from Tennessee expresses his surprise that we do not at once perceive the force of it, and agree with him that our faith pledged remains inviolate, because a reduction of \$650,000 in our revenue is fully equalized by a similar reduction in our expenses. Let this argument be examined in each of its parts. First, he has assumed that \$650,000 at least are saved by the reduction of the Military Establishment? But in what is that saving? In paper there is no real saving to that amount, or to anything like it. The gentlemen must find themselves hard pressed indeed when they are obliged to recur to the establishment voted, as the expense incurred, knowing as they do that there is a wide difference.

SENATE.

Internal Taxes.

MARCH, 1802.

They know that the army voted was not raised. They know the establishment was never complete. They know we have almost as many soldiers in our service now as we had before, and that all their boasted economy resolves itself into the dismissal of a few officers. The second point of this curious argument shall not be disputed. We readily admit the internal revenue to be full \$650,000. But now for the conclusion from these premises: We justify repealing a tax we had promised not to repeal, because we make a saving to the same amount. We had reserved to ourselves the right of repeal, on condition that we should lay an equivalent tax; and a vote to save money comes to the same thing as a tax. Does it, indeed? Do you suppose your creditors will be the dupes of this new-fangled logic? When you took your engagements with them, was there any stipulation that you should be released from it, provided you should make a vote of saving. Was it not always understood that your expenses should be reduced as far and as fast as circumstances would permit, and that your whole surplus revenue should be applied to the payment of your debts? Have you not absolutely mortgaged that surplus to this effect? And can you release yourselves by a vote of saving?

The honorable member from Tennessee went on to express his surprise, that, not liking this plan, we do not come forward to propose amendments. And what have we to do with it? These gentlemen have charged themselves with the conduct of our affairs. They do not deign to ask our opinion on the measures they mean to pursue. Supported by a powerful majority, they do just what they please; and when they have brought forward bad plans, why then forsooth they ask us to mend them. But how mend them? We say that to ameliorate the system of our revenue the duties ought to be lowered; and that you should raise sums equivalent to the reduction by internal taxes. The gentlemen tell us they will have no internal taxes. This is their plan, and they call on us to mend it.

I have noted several things which were said by the gentleman from Virginia, but I will not trespass on the patience of this Senate by a particular reply. Indeed I do not conceive it to be necessary. The whole scope of his argument, like that of his friend from Tennessee, resolves itself into a reliance on the opinions and calculations furnished by the Secretary of our finances. The gentleman from Virginia has told us, that they are better fitted for consideration in our closets, than for debate on this floor. Be it so. He finds it difficult to follow, in argument, statements which vary from or contravert what the Secretary has advanced. This may be the case. He tells us, we must stick to the report; that it has been long in our possession, and that gentlemen fully understand it. Perhaps they do. He says they have made up their minds on this subject. I suppose they have. In fine, he triumphantly read to us a section of the Secretary's report, from the first page, to prove that the Treasury has received from duties the year eighteen hundred and

one, ten million and a half of dollars; and that, had things gone on in the same train, the duties payable this year would have amounted to eleven millions. Hence he infers that the estimate of nine millions and a half for some years to come is quite moderate. I will, sir, since it is insisted on, confine myself strictly to this same report. I pray gentlemen, then, to take the trouble of looking at the table (I,) and to follow me in a few observations, which shall be so clear and so simple as to avoid all difficulty.

They will be pleased in the first place to observe, that this table purports to be a "statement exhibiting the *actual* amount of duties which accrued on merchandise and tonnage, and of the *actual* payments for drawbacks on foreign merchandise, for bounties and allowances, and for expenses of collection during each of the years '1790 to 1799.'" They will particularly observe, that the word *actual* is printed in italics, so as to call our special attention to this table as containing a statement of facts in contradistinction to theory. An account of what *actually happened*, and not an estimate of future contingencies founded on hypothetical calculation.

Gentlemen will have the goodness to look towards the bottom of this table for the years 1797, 1798, and 1799. They will find that the amount of duties, was

In 1797	-	-	\$12,866,984	69
In 1798	-	-	11,402,185	17
In 1799	-	-	15,251,952	68
Together	-			39,521,122 54

That the tonnage was				
In 1797	-	-	103,665	20
In 1798	-	-	107,253	88
In 1799	-	-	128,698	39

Together	-			339,617 47
That the passports produced				
In 1797	-	-	13,886	00
In 1798	-	-	9,978	00
In 1799	-	-	12,518	00

Together	-			36,382 00
Making a total of				39,897,122 01

They will take notice that there was paid for drawbacks and debentures

In 1797	-	-	4,207,728	43
In 1798	-	-	4,799,498	27
In 1799	-	-	5,780,662	72
Together	-			14,787,889 42

And for bounties and allowances				
In 1797	-	-	92,874	29
In 1798	-	-	113,904	42
In 1799	-	-	149,375	02

Together	-			356,153 73
Total of payments was				15,144,043 15

APRIL, 1802.

Internal Taxes.

SENATE.

Which deducted from the receipts
leaves a balance of - - - 24,753,078 86

Finally they will see that the
expenses of collection were

In 1797	-	-	342,696 22
In 1798	-	-	375,879 33
In 1799	-	-	414,618 45

Together	-		1,130,194 04
----------	---	--	--------------

Deducting therefrom the expenses
from the gross revenue, there re-
mains a net balance of - - - 23,622,884 82

And dividing by three we have 7,874,294 94
for the average net produce of duties, tonnage, and
passports, during the last years of which you have
a true account.

Now, sir, it will, I think, be acknowledged that
in this calculation there is no difficulty. In this
plain state of the fact there is nothing intricate.
This is one of the tables on which gentlemen have
had time to meditate in their closets. It can be
understood with the utmost ease. Here is no
supposition, no rule of proportion, but mere addi-
tion and subtraction; and from this, which the
Secretary has sent you as the thing to be relied
on, as the actual state of your revenue, it appears
that during the years 1797, 1798, and 1799 you did
not receive four and twenty millions. Yesterday
I had the honor of stating at large to the Senate
my reasons for believing that we could not safely
consider this part of our revenue as yielding more
than eight millions annually. The most favorable
estimate I could make fell a little short of that
sum. I explained also my reasons for believing,
that it would not for some time to come increase;
and for apprehending that it might suffer no small
diminution. The honorable gentleman from
Virginia, however, tells you that my arguments
and my calculations must be disregarded. Be
it so. He bids you stick to the report of your
Secretary. Agreed. He says you must ground
your faith on the statements of that officer. Con-
tent. And when you examine that part of them
which deals not in splendid conjecture but in so-
ber fact, what is the result? It is, that your an-
nual revenue was not quite seven millions eight
hundred and seventy-five thousand dollars, during
the three years of greatest consumption, which
you have any actual account of; being full one
hundred and twenty-five thousand dollars short of
that which I was willing to take as the existent
amount. Let then what I have said go for nothing,
and bring the argument to this short issue. Is
there any good reason to believe that during eight
years to come your duties on imports and tonnage
will yield annually sixteen hundred thousand dol-
lars more than in the years 1797, 1798, and 1799?
This may happen, sir, but I do not believe it.

Mr. NICHOLAS, of Virginia, said, he did not
believe the gentleman from Pennsylvania (Mr.
Ross) thought the majority had any intention of
sweeping off the public debt in any other way,
than by bona fide payment. As to the pledge so
much talked of, it was nothing more, in his opin-

ion, than a declaration that there should always
be funds in readiness sufficiently large to meet our
engagements. The gentleman from Connecticut
(Mr. TRACY) had, he thought, placed this sub-
ject on a fair footing. He asked whether gentle-
men meant to carry their principles so far as to
tie up the hands of all future legislatures by every
appropriation they made? He would add that
since the pledge of the internal taxes, we had
greatly increased our impost, and pledged that for
the same purposes, of paying principal and inter-
est of the public debt; would not this operate as
an equitable release of these taxes? Mr. N. be-
lieved his own assertion was as good as that of
another, and he supposed our revenue without
these taxes would be amply sufficient for every
national purpose, therefore he should vote for the
repeal.

Mr. Ross said, he could not ascertain what was
the general intention of gentlemen as to taxing
the public debt, but one of the majority had open-
ly declared his opinion in favor of it; and the
journals would show that a gentleman who was
not now a member of the Senate, but high in the
confidence of the majority, (Mr. Chas. Pinckney,)
when he was a member, laid upon the table a law
authorizing the taxation of public stock; it was
true it did not pass, and was probably not called
up by the mover; but he left every one to decide
on the appearance which these proceedings had,
and if they did not put at hazard the security of
our public creditors. Mr. R. said he would add
one word as to the pledge. The laws passed in
1791, 1794, and 1795, in which the promise was
solemnly made and repeated; and in 1798 the
surplus of all our revenue, arising from impost,
tonnage, and internal taxes, was pledged for the
payment of our debts.

On the question, Shall this bill pass as amend-
ed? it was determined in the affirmative—years
15, nays 11, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breck-
enridge, Clinton, Cooke, Colhoun, Ellery, T. Foster,
Franklin, Jackson, Logan, S. T. Mason, Nicholas, and
Sumter.

NAYS—Messrs. Dayton, D. Foster, Howard, J. Ma-
son, Morris, Ogden, Olcott, Ross, Tracy, Wells, and
White.

So it was *Resolved*, That this bill do pass as
amended.

THURSDAY, April 1.

Mr. S. T. MASON, from the committee to whom
was referred, on the 15th March last, the bill for
the relief of the Marshals of certain districts
therein mentioned, reported it without amend-
ment.

The bill, entitled "An act making an appropria-
tion for defraying the expenses which may arise
from carrying into effect the convention made be-
tween the United States and the French Repub-
lic, was read the third time, and passed.

The bill, entitled "An act making a partial ap-
propriation for the support of Government during
the year one thousand eight hundred and two,"
was read the third time, and passed.

SENATE.

Proceedings.

APRIL, 1802.

The Senate took into consideration the amendments reported by the committee to whom was recommitted the bill for revising and amending the acts concerning naturalization; and having adopted the amendments, and further amended the bill,

Ordered, That it pass to the third reading as amended.

The Senate took into consideration the amendments reported by the committee to the bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned;" and having agreed thereto,

Ordered, That the bill pass to the third reading as amended.

The bill, entitled "An act for the relief of Isaac Zane," was read the third time, as amended, by striking out the word "that," in the last line of the second section.

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House agree to some and disagree to other amendments of the Senate to the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, and for other purposes."

FRIDAY, April 2.

The Senate resumed the second reading of the bill for the relief of the Marshals of certain districts therein mentioned.

Ordered, That this bill pass to the third reading.

The Senate took into consideration their amendments, disagreed to by the House of Representatives to the bill for the rebuilding the light-house on Gurnet Point, and for other purposes.

Ordered, That the further consideration thereof be postponed.

The bill for the more convenient organization of the courts of the United States was read the second time and amended.

Ordered, That it be recommitted to Messrs. ANDERSON, BRADLEY, NICHOLAS, and JACKSON, the original committee who brought in the bill; and that Mr. BRECKENRIDGE be added thereto in the place of Mr. BROWN, absent, further to consider and report thereon.

The bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," was read the third time and further amended, by adding to the end of the fourth section these words: "Provided always, that, in every case for forfeitures hereinbefore given, the action be commenced within two years from the time the cause of action may have arisen." And by filling the blanks in the first, second, and third sections with the words "first" and "January," respectively, and in the last section with the words "one hundred."

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act sup-

plementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

SATURDAY, April 3.

The Senate took into consideration their amendments, disagreed to by the House of Representatives, to the bill for the rebuilding the light-house on Gurnet Point, and for other purposes.

Resolved, That they do recede from the amendments disagreed to, and concur in the amendments of the House of Representatives to their amendments on the said bill.

The bill, entitled "An act for revising and amending the acts concerning naturalization," was read the third time, and the fourth article of the first section was amended by striking out, after the words "1795 may," these words: "within one year after the passing of this act;" and after "on," in the following line, by striking out "his declaring on oath or affirmation in," and inserting "due proof made to;" and after "least," in the next line, by inserting "immediately preceding his application;" and after the word "held," "and on his declaring on oath or affirmation;" and in the last line of the original bill by substituting the word "naturalized" for "admitted;" and,

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 18, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Morris, Nicholas, Ross, Sumter, and White.

NAYS—Messrs. Dayton, D. Foster, Howard, J. Mason, Ogden, Olcott, Tracy, and Wells.

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill declaring the assent of Congress, to an act of the General Assembly of Virginia, therein mentioned, in which they desire the concurrence of the Senate.

The said bill was read and ordered to a second reading.

The bill, entitled "An act for the relief of the Marshals of certain districts therein mentioned," was read the third time, and passed.

MONDAY, April 5.

Mr. ANDERSON, from the committee to whom was recommitted, on the 2d instant, the bill to provide for the more convenient organization of the Courts of the United States, reported amendments, which were read.

Ordered, That they lie for consideration.

The Senate resumed the third reading of the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins, and for other purposes.'"

APRIL, 1802.

Proceedings.

SENATE.

The bill declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned, was read the second time, and referred to Messrs. NICHOLAS, STONE, and CLINTON, to consider and report thereon.

Ordered, That the further consideration thereof be postponed.

TUESDAY, April 6.

Mr. BRADLEY presented the petition of Elijah Brainard, a disabled soldier during the Revolutionary war, and praying relief.

Ordered, That the petition be referred to Messrs. BRADLEY, ANDERSON, and D. FOSTER, to consider and report thereon.

On motion, that it be

Resolved, That — be a committee, to join with such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress in their present session, and when it may be expedient to close the same:

Ordered, That this motion lie for consideration.

The Senate took into consideration the amendments reported by the committee to the bill to provide for the more convenient organization of the Courts of the United States; and, having agreed thereto,

Ordered, That this bill pass to the third reading as amended.

On motion, that it be

Resolved, That a committee be appointed to inquire whether any, and, if any, what, provisions and regulations are necessary in addition to the several acts providing for the sale of the lands of the United States, and that the said committee have leave to report by bill or bills:

Ordered, That this motion lie for consideration.

Mr. T. FOSTER, from the committee to whom was referred, on the 29th of March last, the bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the 2d day of March, 1799, reported it without amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill further to alter and establish certain post roads; also, a bill for the relief of Paolo Paoly; in which bills they desire the concurrence of the Senate.

The bill first mentioned in the message above recited was read, and, by unanimous consent, was read a second time, and referred to Messrs. JACKSON, BRADLEY, and FRANKLIN, to consider and report thereon.

The bill for the relief of Paolo Paoly was read the first, and, by unanimous consent, a second time, and referred to Messrs. BRADLEY, D. FOSTER, and WELLS, to consider and report thereon.

The committee to whom was referred the letter of Simon Willard to the Secretary of the Senate, relative to a clock made by the said Willard for the use of the Senate, reported a letter from John E. Rigden, a watch and clock maker of this city, which declares, as his opinion, that five hundred

dollars will be an ample and liberal reward for such a time-piece; and the committee recommend the following resolution:

Resolved, That Simon Willard be paid, by the Secretary of the Senate the sum of five hundred dollars for an eight-day clock, set up in the Senate room, and purchased of him, agreeably to a resolution of the 25th of February, 1801, to be defrayed out of the contingent fund.

And the report was adopted.

On motion, that it be

Resolved, That the Secretary of the Navy be requested to prepare and lay before the Senate a statement of the expenses actually incurred in support of the corps of marines for the last year, distinguishing the number and expenses of the officers of each grade:

Ordered, That this motion lie for consideration.

The Senate resumed the consideration of the bill regulating foreign coins; and

Ordered, That it be postponed to Monday next.

The motion made on the 29th of March, for a statement from the Secretary of War, was resumed, and sundry amendments proposed; and on motion, it was agreed that the further consideration thereof be postponed.

WEDNESDAY, April 7.

A message from the House of Representatives informed the Senate that the House of Representatives have passed a bill, entitled "An act for the relief of Thomas K. Jones," in which they desire the concurrence of the Senate.

The bill was read the first time, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. J. MASON, DWIGHT FOSTER, and OGDEN, to consider and report thereon.

Mr. J. MASON, from the committee to whom was referred, on the 30th of March last, the bill to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowances and payment thereof, and in lieu of stamp duties on debentures," reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. NICHOLAS, from the committee to whom was referred, on the fifth instant, the bill declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned, reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. FRANKLIN, from the committee to whom was referred, on the 29th of March last, the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," reported it without amendment.

On motion, it was agreed to amend the bill, by adding the word "heretofore," fourth section, line first, after the word "certificates."

Ordered, That this bill pass to the third reading as amended.

Mr. OGDEN presented the petition of Jonathan Snowden, a lieutenant in colonel Lee's legion dur-

ing the Revolutionary war, and a captain in the army late under the command of General St. Clair, wounded in the public service, and praying to be put on the pension or half-pay list; and the petition was read.

Ordered, That it be referred to Messrs. BRADLEY, ANDERSON, and DWIGHT FOSTER, the committee appointed on the petition of Elijah Brainard, the 6th instant, to consider and report thereon.

The Senate resumed the second reading of the bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, 1799.

On motion, to amend the bill, by striking out, from the word "assembled," in the second line, to the end of the bill, and insert:

"That in lieu of the salaries at present allowed by law to the officers of the Government of the United States herein mentioned, the following annual compensations be, and are hereby, granted to the said officers respectively, from the —, that is to say: The Secretary of State, \$—; the Secretary of the Treasury, \$—; the Secretary of War, \$—; the Secretary of the Navy, \$—; the Attorney General, \$—; the Comptroller of the Treasury, \$—; the Treasurer, \$—; the Auditor of the Treasury, \$—; the Commissioner of the Revenue, \$—; the Register of the Treasury, \$—; the Accountant of the War Department, \$—; the Accountant of the Navy Department, \$—; the Postmaster General, \$—; and the Assistant Postmaster General, \$—.

"SEC. 2. *And be it further enacted*, That this act shall continue in force for —, and no longer;"

It passed in the negative—yeas 9, nays 16, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Ogden, Olcott, Ross, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, Nicholas, Stone, Sumter, and Wright.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the motion made yesterday on the subject of Western lands, which, being amended, was agreed to as follows:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, provisions and regulations are necessary in addition to the several acts providing for the sale of the lands of the United States northwest of the river Ohio, and that Messrs. BROWN, ROSS, and FRANKLIN, be the committee, and that the said committee have leave to report by bill or bills.

On motion, that it be

Resolved, That a committee be appointed to examine and report what regulations ought to be adopted respecting the lands claimed by the United States within the State of Tennessee, and that the said committee do report by bill or otherwise:

Ordered, That this motion lie until to-morrow, for consideration.

THURSDAY, April 8.

Mr. J. MASON, from the committee to whom was referred, on the 7th instant, the bill entitled

"An act for the relief of Thomas K. Jones," reported it without amendment.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the motion made yesterday, that a committee be appointed to examine and report what regulations ought to be adopted respecting the lands claimed by the United States within the State of Tennessee.

And, on the question, Will the Senate adopt this motion? it passed in the affirmative—yeas 21, nays 3, as follows:

YEAS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Clinton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, Logan, J. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Stone, Sumter, Wells, and Wright.

NAYS—Messrs. Anderson, and Cocke.

Ordered, That Messrs. BROWN, STONE, BRECKENRIDGE, ROSS, and NICHOLAS, be the committee.

The bill for the more convenient organization of the Courts of the United States, was read the third time, and amended, by adding at the end of section 4th, line 80th, of the printed bill, the words, "except as hereinafter excepted;" and between the 5th, and 6th, sections of the printed bill, a new section; and section 6th, line 4th, after the word "circuit," insert "or district;" and line 6th, after "circuit," insert "and district." Section 11th, line 7th, original bill, before the word "juror," insert "petit."

And, on motion to strike out the 11th section of the original bill, as amended, to wit:

"*And be it further enacted*, That there shall be appointed, by the President of the United States, from time to time, as many general commissioners of bankruptcy in each district of the United States as he may deem necessary; and, upon petition to the judge of a district court for a commission of bankruptcy, he shall proceed as is provided in and by an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,' and appoint not exceeding three of the said general commissioners, as commissioners of the particular bankrupt petitioned against; and the said commissioners, together with the clerk, shall each be allowed, as a full compensation for their services, when sitting and acting under their commissions, at the rate of six dollars per day for every day which they may be employed in the same business, to be apportioned among the several causes on which they may act on the same day, and to be paid out of the respective bankrupts' estate: *Provided*, That the commissioners who may have been, or may be, appointed in any district, before notice shall be given of the appointment of commissioners for such district by the President, in pursuance of this act, and who shall not then have completed their business, shall be authorized to proceed and finish the same, upon the terms of their original appointment."

It passed in the negative—yeas 11, nays 15, as follows.

YEAS—Messrs. Bradley, Brown, Dayton, Dwight Foster, Howard, J. Mason, Ogden, Olcott, Ross, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

APRIL, 1802.

Proceedings.

SENATE.

And it was agreed to amend the title of the bill as follows: "An act to amend the Judicial System of the United States."

And, on the question, Shall this bill pass, as amended? it was determined in the affirmative—yeas 16, nays 10, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Bradley, Dayton, Dwight Foster, Howard, J. Mason, Ogden, Olcott, Ross, Wells, and White.

So it was *Resolved*, That this bill do pass; that it be engrossed; and that the title thereof be "An act to amend the Judicial System of the United States."

The bill, entitled "An act to revive and continue in force an act, entitled 'An act to augment the salaries of the officers therein mentioned,' passed the second day of March, one thousand seven hundred and ninety-nine," was read the third time.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 23, nays 2, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Dayton, Ellery, T. Foster, Franklin, Howard, Jackson, Logan, S. T. Mason, J. Mason, Nicholas, Ogden, Stone, Sumter, Wells, White, and Wright.

NAYS—Messrs. Dwight Foster and Olcott.

The bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" was considered.

Ordered. That it be postponed until to-morrow.

The bill, entitled "An act to amend an act, entitled 'An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures,'" was read the third time, and passed.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned," was read the third time, and passed.

Mr. BRADLEY, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act for the relief of Paolo Paoly," reported it without amendment.

FRIDAY, April 9.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Paolo Paoly."

Ordered, That this bill pass to the third reading.

The Senate resumed the second reading of the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

7th CON.—9

Ordered, That this bill be recommended to Messieurs FRANKLIN, BRECKENRIDGE, and SUMTER, the original committee, further to consider and report thereon.

The Senate resumed the consideration of the resolution of the House of Representatives, of the 24th March last, authorizing the President of the Senate and Speaker of the House of Representatives to adjourn their respective Houses on the second Monday in April; and agreed that it should be postponed.

The Senate took into consideration the motion made on the 6th instant, that a committee be appointed, to join with such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress, in their present session, and when it may be expedient to close the same; and, having agreed thereto,

Ordered, That Messrs. OLCOTT, BRECKENRIDGE, and BALDWIN, be the committee on the part of the Senate.

The bill, entitled "An act for the relief of Thomas K. Jones," was read the third time, and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes; in which they desire the concurrence of the Senate. They agree to the amendments of the Senate to the bill for revising and amending the acts concerning naturalization, with amendments; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to their amendments to the bill last mentioned in the message.

Resolved, That they do concur therein.

Mr. BRADLEY gave notice that he should, on Monday next, move for leave to bring in a bill to alter the term of the district court for the district of Vermont, and for other purposes.

Mr. S. T. MASON gave notice that, on Monday next, he should ask leave to bring in a bill respecting the District of Columbia.

On motion, that it be

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, directed to cause to be printed—copies of the journal, deposited in his office, of the proceedings of the general convention which formed the Constitution of the United States, and to cause the same to be distributed as the laws of the United States have heretofore been:

Ordered, That this motion lie for consideration.

MONDAY, April 12.

A message from the House of Representatives informed the Senate that the House have passed

SENATE.

Proceedings.

APRIL, 1802.

a bill for the relief of Theodosius Fowler; also, a bill for the relief of Paul Coulon; in which bills they desire the concurrence of the Senate.

The bill for the relief of Theodosius Fowler was read the first, and, by unanimous consent, a second time, and referred to Messrs. J. MASON, BRECKENRIDGE, and ELLERY, to consider and report thereon.

The bill for the relief of Paul Coulon was read, and ordered to the second reading.

The bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, was read the second time, and referred to Messrs. FRANKLIN, BRADLEY, DAYTON, BROWN, and BALDWIN, to consider and report thereon.

The bill, entitled "An act for the relief of Paolo Paoly," was read the third time, and passed.

The Senate took into consideration the motion made on the 9th instant, for printing the journal of the proceedings of the general convention which formed the Constitution of the United States, and

Ordered, That it be postponed until Wednesday next.

Agreeably to notice given, on the 9th instant, Mr. BRADLEY had leave to bring in a bill to alter the sessions of the district court for the district of Vermont, and for other purposes; and the bill was read, and by unanimous consent it was read the second time.

Ordered, That it be referred to Messrs BRADLEY, OGDEN, and T. FOSTER, to consider and report thereon.

The following motion was made by Mr. CLINTON, and seconded, and ordered to lie for consideration.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as parts of the Constitution, to wit:

That in all elections of President and Vice President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice President.

Agreeably to notice given on the 9th instant, Mr. S. T. MASON obtained leave to bring in a bill for establishing the Government of the Territory of Columbia.

The bill was read and ordered to the second reading.

Mr. BROWN from the committee appointed the 8th instant, on the subject of the lands of the United States in the State of Tennessee, reported the following resolution; which was read, and ordered to lie for consideration:

Resolved, That the President of the United States be requested to give directions to the Attorney General to collect, digest, and report to Congress, at their next session, such documents and other information relative to

the lands claimed by the United States within the State of Tennessee, under a deed of cession from the State of North Carolina, executed in December, 1789, as shall best serve to exhibit the extent of the claims reserved by the second condition expressed in said deed; and how far the said reservations have been satisfied; also, the situation and probable quantity of said lands which may be at the disposition of the United States, consistently with the conditions of the said deed of cession, and with existing treaties with the Indian tribes.

The Senate took into consideration the resolution of the House of Representatives of the 24th March last, that the President of the Senate and Speaker of the House of Representatives be authorized to adjourn their respective Houses on the 12th inst.

Resolved, That they do agree thereto.

The Senate took into consideration the motion made on the sixth instant, requesting the Secretary of the Navy to prepare a statement of the expenses of the Marine Corps; and the motion was amended and adopted as follows:

Resolved, That the Secretary of the Navy be requested to prepare and lay before the Senate an estimate of the expenses of the Marine Corps for the last year, distinguishing the number and expense of the officers of each grade.

The Senate resumed the third reading of the bill, entitled "An act to repeal, in part, the act, entitled, 'An act regulating foreign coins, and for other purposes.'"

Ordered, That the further consideration of this bill be postponed until Monday next.

TUESDAY, April 13.

Mr. OLCOTT, from the joint committee appointed, on the 9th instant, to consider what business is necessary to be done by Congress in their present session, and when it may be expedient to close the same, made report; which was read, and ordered to lie for consideration.

The bill for establishing the Government of the Territory of Columbia was read the second time and referred to Messrs. S. T. MASON, WRIGHT, and BALDWIN, to consider and report thereon.

The bill, entitled "An act for the relief of Paul Coulon," was read the second time, and referred to Messrs. FRANKLIN, ELLERY, and LOGAN, to consider and report thereon.

Mr. FRANKLIN from the committee to whom was recommended, on the ninth instant, the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," reported amendments; which were read, and ordered to lie for consideration.

The Senate took into consideration the motion, made yesterday, for an amendment to the Constitution of the United States.

Ordered, That the further consideration of the subject be postponed until to-morrow.

The Senate took into consideration the report of the committee, made yesterday, respecting the lands claimed by the United States within the State of Tennessee.

APRIL, 1802.

Proceedings.

SENATE.

Ordered, That the further consideration thereof be postponed until to-morrow.

WEDNESDAY, April 14.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend an act, entitled "An act for the relief of sick and disabled seamen," and for other purposes; in which they desire the concurrence of the Senate. They have passed the bill, sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," with amendments; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and ordered to the second reading.

The amendments to the bill last mentioned in the message were read, and ordered to lie for consideration.

The Senate resumed the consideration of the motion made on the 12th instant, for an amendment to the Constitution of the United States.

Ordered, That the further consideration thereof be postponed until to-morrow.

The Senate resumed the consideration of the report of the committee, made on the 12th instant, respecting the lands claimed by the United States within the State of Tennessee; and, on motion to amend it, by inserting after the word "lands," these words, line 10th, "to which the Indian claim is extinguished, and which is not covered by legal titles under the State of North Carolina:"

Ordered, That the further consideration thereof be postponed until to-morrow.

Mr. J. MASON, from the committee to whom was referred, on the 12th instant, the bill for the relief of Theodosius Fowler, reported it without amendment; and, after debate,

Ordered, That the further consideration thereof be postponed until to-morrow.

The amendments reported by the committee to the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," were considered; and, after progress,

Ordered, That the further consideration thereof be postponed until to-morrow.

THURSDAY, April 15.

Mr. JACKSON, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act further to alter and establish certain post roads," reported amendments; which were read, and ordered to lie for consideration.

The VICE PRESIDENT laid before the Senate a report from the Secretary of the Navy, being an estimate of the Marine Corps for the year 1801; which was read, and ordered to lie for consideration.

The Senate considered the amendments of the House of Representatives to the bill, entitled "An

act for the better security of public money and property in the hands of public officers and agents."

Ordered, That they be referred to Messrs. TRACY, NICHOLAS, and OGDEN, the committee who brought in the bill, to report thereon.

The Senate resumed the second reading of the bill for the relief of Theodosius Fowler.

Ordered, That this bill be postponed.

On motion, that it be

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Comptroller of the Treasury be, and he is hereby, directed to obtain a continuance or continuances of the suit in favor of the United States against Theodosius Fowler, now pending before the circuit court, in and for the district of New York, until the session of said court which shall be first held after the next meeting of Congress: And in the meantime the accounting officers of the Treasury are directed to re-settle and state the accounts of the United States against Theodosius Fowler, upon his contract made with the Secretary of the Treasury, on — day of —, giving to said Fowler at least thirty days' notice of the time when he may attend, and produce such claims, vouchers, documents, and testimony, as he may choose; and after fully attending to said accounts, and the claims, &c., of said Fowler, they are directed to make report of their proceedings thereon to Congress, at their next session:

Ordered, That this motion lie for consideration.

The motion made on the 9th instant, that the Secretary of State cause the journals of the General Convention which formed the Constitution of the United States to be printed, was further postponed.

The bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" was read the third time.

Resolved, That this bill do pass with the following amendments:

Section 1, line 3, after the word "act," insert "and until the first day of January next."

Line 4, after the word "warrants," insert "heretofore."

Line 4, after the word "or," insert "registers."

Line 5, strike out the word "by," and insert "agreeable to."

Line 10, after the word "the," in the second instance, strike out to the end of section, and insert as follows: "Same manner and under the same restrictions as might have been done before the first day of January last, provided that persons holding registers' certificates for a less quantity than one hundred acres may locate the same on such parts of fractional townships as shall, for that purpose, be divided by the Secretary of the Treasury into lots of fifty acres each."

Strike out 2d, 3d, 4th, 5th, 6th, 7th, and 8th sections, and insert a new section.

"And be it further enacted, That it shall be the duty of the Secretary of War to receive claims to lands for military services, and claims for duplicates of warrants issued from his office, or from the land office of Virginia, or of plats and certificates of survey founded on such warrants, suggested to have been lost or destroyed, until the first day of January next, and no longer, and

SENATE.

Proceedings.

APRIL, 1802.

immediately thereafter to report the same to Congress, designating the numbers of claims of each description, with his opinion thereon."

The motion made yesterday, to amend the resolution under consideration on the 12th instant respecting the lands claimed by the United States within the State of Tennessee, was resumed, to wit: To insert, after the word "lands," in the second instance, these words: "to which the Indian claim is extinguished, and which is not covered by legal titles under the State of North Carolina."

And on the question, Will the Senate agree to this amendment? it passed in the negative—yeas 5, nays 20, as follows:

YEAS—Messrs. Anderson, Cocke, Nicholas, Tracy, and White.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, S. T. Mason, J. Mason, Ogden, Olcott, Stone, Sumter, Wells, and Wright.

On motion to adopt the resolution, it passed in the affirmative—yeas 23, nays 2, as follows:

YEAS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, S. T. Mason, J. Mason, Nicholas, Ogden, Olcott, Stone, Sumter, Tracy, Wells, White, and Wright.

NAYS—Messrs. Anderson and Cocke.

So the resolution was agreed to.

A message from the House of Representatives informed the Senate that the House have passed a bill making provision for the redemption of the whole of the public debt of the United States in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and it was by unanimous consent read the second time.

Ordered, That it be referred to Messrs. BALDWIN, BRECKENRIDGE, NICHOLAS, TRACY, and LOGAN, to consider and report thereon.

The bill, entitled "An act to amend an act, entitled 'An act for the relief of sick and disabled seamen, and for other purposes,'" was read the second time, and referred to Messrs. BALDWIN, DWIGHT FOSTER, and TRACY, to consider and report thereon.

Ordered, That the consideration of the motion made on the 12th instant, relative to an amendment of the Constitution of the United States, be postponed until Monday next.

FRIDAY, April 16.

Mr. FRANKLIN, from the committee to whom was referred, on the 13th instant, the bill for the relief of Paul Coulon, reported it without amendment.

Ordered, That the consideration of this bill be postponed until to-morrow.

On motion, by Mr. BRADLEY, that it be

Resolved, by the Senate and House of Representatives of the United States, two-thirds of both Houses concurring, That the following article be proposed to

the Legislatures of the several States, as amendments to the Constitution of the United States:

That, after the third day of March, in the year one thousand eight hundred and three, the choice of Electors of President and Vice President of the United States shall be made by dividing each State into a number of districts, equal to the number of Electors to be chosen in such State, and by the persons in each of those districts who shall have qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Elector, in the manner which the Legislature thereof shall prescribe:

Ordered, That this motion lie for consideration until Monday next.

A message from the House of Representatives informed the Senate that the House have passed a bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; a bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city; a bill to regulate and fix the compensations of the officers of the Senate and House of Representatives; a bill for the relief of Fulwar Skipwith; and a bill for the relief of Lewis Tousard; in which bills they desire the concurrence of the Senate.

The bills were read, and ordered severally to the second reading; and, by unanimous consent, the bill to regulate and fix the compensations of the officers of the Senate and House of Representatives, was read the second time, and referred to Messrs. COCKE, DWIGHT FOSTER, and BRADLEY, to consider and report thereon.

Mr. WRIGHT, from the committee to whom was referred, on the 13th instant, the bill for establishing the Government of the Territory of Columbia, reported amendments, which were read, and ordered to lie for consideration.

The amendments reported to the bill, entitled "An act to alter and establish certain post roads," were considered and adopted, together with further amendments.

Ordered, That this bill pass to the third reading as amended.

By unanimous consent, the rule was dispensed with, and the bill for the relief of Lewis Tousard was read the second time, and referred to Messrs. BRECKENRIDGE, ANDERSON, and OGDEN, to consider and report thereon.

By unanimous consent, the bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city, was read the second time, and referred to Messrs. NICHOLAS, J. MASON, and WRIGHT, to consider and report thereon.

The VICE PRESIDENT notified the Senate that, as the session was advancing to a close, agreeably to the practice heretofore adopted, he should withdraw himself from further attendance for the remainder of the session.

And on motion, the Senate adjourned until to-morrow.

APRIL, 1802.

Proceedings.

SENATE.

SATURDAY, April 17.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides; and the honorable ABRAHAM BALDWIN was chosen.

Ordered, That the Secretary notify the House of Representatives of this election.

On motion, it was

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the Vice President, elected the honorable ABRAHAM BALDWIN their President *pro tempore*.

On motion, it was

Ordered, That Mr. BRECKENRIDGE be of the committee to whom was referred the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, in place of Mr. BALDWIN, elected President of the Senate.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 16th instant, the bill for the relief of Lewis Tousard, reported it without amendment.

Ordered, That this bill pass to a third reading.

The bill for the relief of Fulwar Skipwith was read the second time, and referred to Messrs. NICHOLAS, DAYTON, and CLINTON, to consider and report thereon.

The bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," was read the second time, and referred to Messrs. BROWN, ANDERSON, and TRACY, to consider and report thereon.

Mr. WRIGHT presented the petition of the traders, pilots, builders, and others, concerned in navigation in the district of St. Mary's river, praying that the Collector's office may be established there, being more convenient than at Nanjemoy; and the petition was read.

Ordered, That it be referred to the last mentioned committee, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee to the bill for establishing the Government of the Territory of Columbia.

Ordered, That the further consideration thereof be postponed until Monday next.

Mr. BRADLEY, from the committee to whom was referred, on the 12th instant, the bill altering the sessions of the District Court in the district of Vermont, and for other purposes, reported amendments, which were read and adopted.

Ordered, That this bill pass to the third reading as amended.

MONDAY, April 19.

Ordered, That Mr. STONE be on the committee to whom was referred the bill for the relief of sick and disabled seamen, in place of Mr. BALDWIN, President.

On motion, it was *Ordered*, That the committee to whom was referred, on the 1st of March

last, the petition of Ebenezer Stevens, be discharged.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the service of the United States, in which they desire the concurrence of the Senate.

The bill was read, and, by unanimous consent, the bill was read the second time, and referred to Messrs. J. MASON, NICHOLAS, and TRACY, to consider and report thereon.

Mr. COCKE, from the committee to whom was referred, on the 16th instant, the bill regulating and fixing the compensations of officers of the Senate and House of Representatives, reported it without amendment.

Ordered, That Mr. STONE be on the committee to whom was referred the bill making provision for the redemption of the whole of the public debt of the United States, in place of Mr. BALDWIN, President.

The bill, entitled "An act for the relief of Louis Tousard," was read the third time and passed.

Mr. NICHOLAS, from the committee to whom was referred, on the 16th instant, the bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city, reported amendments; which were read, and ordered to lie for consideration.

TUESDAY, April 20.

Mr. J. MASON, from the committee to whom was referred, on the 19th instant, the bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States, reported it without amendment.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

The object of the enclosed letter from the Director of the Mint at Philadelphia being within Legislative competence only, I transmit it to both Houses of Congress.
TH. JEFFERSON.

APRIL 20, 1802.

The Message and letter therein referred to were read, and ordered to lie for consideration.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 15th instant, the bill making provision for the redemption of the whole of the public debt of the United States, reported an amendment; which was read.

Ordered, That it lie for consideration.

Mr. BROWN, from the committee to whom was referred, on the 18th of March last, the petition of Alexander Gardner and Thos. Pinckney, reported that the prayer of the petition cannot be granted, and that the petitioners have leave to withdraw the same; and the report was adopted.

The Senate resumed the second reading of the bill for the relief of Paul Coulon.

SENATE.

Redemption of the Public Debt.

APRIL, 1802.

On the question, Shall this bill pass to the third reading? it was determined in the negative.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend an act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes; also, a bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two; in which bills they desire the concurrence of the Senate.

The bills were read, and severally passed to the second reading.

Ordered, That the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins, and for other purposes,'" be further postponed.

The bill, entitled "An act further to alter and establish certain post roads," was read the third time, and was further amended.

On motion to strike out the following words from the section last reported as an amendment, to wit:

"And it shall be, and it is hereby declared to be, the duty of drivers of all other carriages, in every reasonable case, to give way to the carriage conveying the mail; and if any person or persons owning or driving other carriages, shall use such marks or signals, or shall refuse to give the road to the carriage carrying the mail of the United States whenever the same may be practicable, such person or persons, so offending, shall forfeit and pay a sum not exceeding thirty dollars for every such offence, to be prosecuted for, and recovered, as in the foregoing section is pointed out."

It passed in the negative—yeas 7, nays 17, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Franklin, S. T. Mason, and Wright.

NAYS—Messrs. Baldwin, Bradley, Brown, Clinton, Ellery, T. Foster, Jackson, J. Mason, Morris, Nicholas, Ogden, Olcott, Stone, Sumter, Tracy, Wells, and White.

And having agreed to amend the title of the bill,

Resolved, That this bill pass as amended.

Mr. NICHOLAS, from the committee, to whom was referred on the 17th instant, the bill for the relief of Fulwar Skipwith, reported it without amendment.

Mr. OLCOTT gave notice that he should, tomorrow, ask leave to bring in a bill fixing the time for the next meeting of Congress,

Mr. BROWN, from the committee to whom the subject was referred on the 7th instant, reported a bill to extend and continue in force the provisions of an act entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes or his associates for lands lying between the Miami rivers in the Territory Northwest of the Ohio, and for other purposes;" which bill was read, and ordered to the second reading.

And on motion, the Senate adjourned until tomorrow.

WEDNESDAY, April 21.

Mr. BROWN, from the committee appointed on the bill to extend and continue in force the provisions of an act, entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes," reported an additional section to the said bill; which was read, and, together with the bill, was read the second time.

The bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, was read the second time, and referred to Messrs. ELLERY, CLINTON, and J. MASON, to consider and report thereon.

The bill to amend "An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," was read the second time, and referred to Messrs. ELLERY, CLINTON, and WELLS, to consider and report thereon.

Mr. BRADLEY gave notice that he should, tomorrow, ask leave to bring in a bill to establish by law a more uniform manner of holding elections in each State for Representatives in the Congress of the United States.

Agreeably to notice given yesterday, Mr. OLCOTT had leave to bring in a bill fixing the time for the next meeting of Congress, which was read and ordered to the second reading.

The bill altering the sessions of the district court in the district of Vermont, and for other purposes, was read the third time. On the question, Shall this bill pass? it was determined in the negative.

The Senate resumed the second reading of the bill for the relief of Theodosius Fowler.

Ordered, That this bill pass to the third reading.

Mr. TRACY, from the committee to whom was referred the amendments of the House of Representatives to the bill, entitled "An act for the better security of public money and property in the hands of public officers and agents," reported that a conference be asked on the subject-matter thereof; and the report was disagreed to.

Mr. FRANKLIN from the committee to whom was referred, on the 12th instant, the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, reported amendments which were read.

Ordered, That they lie for consideration.

REDEMPTION OF THE PUBLIC DEBT.

The committee to whom was referred the bill making provision for the redemption of the public debt, reported an amendment to the 4th section. This section authorized making loans, in Europe or America, to pay off instalments of the public debt, which fall due in 1803 to 1806, inclusively; and then directs that an equivalent sum shall be laid out in the purchase or redemption

APRIL, 1802.

Redemption of the Public Debt.

SENATE.

of such parts of the present domestic debt as the Commissioners of the Sinking Fund should think proper. The amendment proposed that, instead of the present domestic debt, it should stand, such parts of the present debt of the United States, and other demands against them, as the Commissioners of the Sinking Fund may lawfully pay agreeably to the provisions hereinbefore made.

In support of this amendment it was alleged, that the act would be defective if the provisions of this clause were not co-extensive with those which are contained in the preceding part of the bill. That it was contemplated, in the bill, to bring three millions, which were in the Treasury, (and which were set apart for payment of demands in consequence of treaties,) to the aid of the present appropriation; and, of course, it would be proper to provide for payment of those demands out of the Sinking Fund. And a reference was made to the third section, in which the special application of the Sinking Fund (\$7,300,000) created by the first, and made payable by the second section, is particularly detailed. This application is, 1st. To pay any sums the Commissioners of the Sinking Fund are already bound to pay by former laws.

2d. To pay the interest and charges on the present debt of the United States, including the interest and charges on future loans, for reimbursing or redeeming any instalments or parts of the principal of the said debt.

3d. To pay whatever might be necessary to discharge any instalment or part of the principal of the present debt, and of any future loans which may be made for reimbursing or discharging the same.

4th. To apply the balance of the fund, if any, to the further and final redemption, by payment or purchase, of the present debt, including therein, first, loans for the reimbursement thereof; second, temporary loans from the bank; third, demands against the United States under any treaty or convention with a foreign Power.

It was objected that the act stood better without the amendment. First. Because the object was at once more definite and more proper. The intention avowed had been to apply \$7,300,000 to pay the debt foreign and domestic; wherefore, if new loans were made to pay the foreign debt, an equivalent sum ought to be applied to the payment of the domestic debt.

Secondly. Because the amendment seemed to imply the idea that this appropriation was illusory; for that, if it were to be real, the borrowing of any given sum, to meet an instalment of the foreign debt, would leave an equivalent in the Treasury, which would be no otherwise employed than in the redemption of the domestic debt.

Thirdly. Because there was, by the amendment, if not a direct contradiction in terms, such a strange confusion of words as was totally unintelligible. Thus, a part of the second, third, and fourth objects of the Sinking Fund, as pointed out in the third section, is to pay the principal and interest of new loans; and the effect of the amendment is, that a sum equivalent to the new loans should be

applied to these objects. Wherefore, it would follow that the money left in the Treasury, by making the new loans, should be applied in paying those new loans.

Fourthly. Because the necessity of the amendment, so far as relates to the demands, in contradistinction to the debts, did not appear; for if, as was stated, a sum of three millions was already appropriated for payment of those demands, any sum borrowed, for temporary convenience, from that fund to aid the sinking fund, must be replaced of course.

Fifthly. Because this amendment tended to defeat the intention of the bill, or at least to render that intention highly questionable. It was reasoning in a circle. Seven millions are to be applied in payment of our debts, foreign and domestic. Instead of paying three millions of foreign debt, which fall due, a new loan of three millions is made. The equivalent sum of three millions, which remains in the Treasury, instead of being applied to pay our domestic debt, is to be employed in satisfaction of demands. And the three millions now in the Treasury, which had been set apart for these demands, instead of being applied to payment of the domestic or foreign debt, is to be thrown into the sinking fund as part of the appropriation which ought to come solely from the revenue.

Sixthly. Because if the effect of the amendment was not such as is last stated, it would at least have that appearance, and give but too much reason for the people to apprehend that they were deceived in the idea held out to them, viz: that, notwithstanding the repeal of the internal taxes, the revenue of the United States would permit the appropriation of so large a sum as \$7,300,000 annually to the payment of our debts. Instead of which they would find that this payment was to be made by funds formerly provided, and which are all of them long since appropriated by law to the redemption of the public debt.

The amendment was adopted.

Another amendment was proposed, viz: To strike out from the first section the words "and also future loans which may be made for reimbursing or redeeming any instalment or parts of the principal of the said debt."

In support of the amendment, it was said that the section, as it stood, was unintelligible; and, to prove this, the supporters of the bill were repeatedly called on to explain it; that, if any meaning could be regularly applied to it, that meaning was wholly improper; for it appeared to provide that future loans should be made part of the sinking fund; that, by this section, the sum of \$7,300,000, specified therein, was to be made up out of the duties on merchandise and tonnage, if the other objects designated in it should fall short; that these objects are, first, the present sinking fund; second, the sum requisite to pay the principal and interest of the present debt, including temporary loans heretofore obtained; and, thirdly, future loans; that the words moved to be struck out, could not be otherwise interpreted, because it could not, by any figure of speech, be said that the present debt

includes future loans to pay the present debt; that even admitting such a strained interpretation, it could not apply to the present case; because the interest of the present debt, being already provided for by law, forms a proper item in the account of those sums which constitute the sinking fund, but if future loans form a part of the present debt, they certainly are a part for the interest of which no provision has been made; that if it was really intended by the patrons of this act to make up the sinking fund by new loans, the measure was disgraceful to Government, would expose the Legislature to contempt, and justly excite the public indignation.

In opposition to the amendment it was said, that the section was very clear and intelligible. That those who did not understand it, must read the report of the Secretary of the Treasury on which it was founded. That those who properly considered the report would easily comprehend the act. That the words which were proposed to be struck out were necessary. That this necessity would appear from the subsequent provisions of the act.

The amendment was lost—yeas 8, nays 18, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, Morris, Ogden, Olcott, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, J. Mason, Nicholas, Stone, Sumter, and Wright.

It was then moved to strike out the words, "or any individual or individuals," in the fifth section.

In favor of the motion it was said: That the appointment of an agent to remit annually two millions of dollars, would be not only improper in itself, but highly obnoxious to the merchants of America. That, from the nature of the business, it was to be presumed that a man of mercantile education and habits would be chosen. That whether he was allowed to make commercial speculations for the United States, or confined merely to the purchase of bills of exchange, his powers might be applied to personal purposes. That it would be easy for him to employ his particular creatures to purchase cargoes and make shipments; then purchase bills drawn on the credit of such cargoes, if the speculation should prove successful, share in the profit, and, if ruinous, leave the nominal merchant to be relieved by a commission of bankruptcy. That in the present state of things, when mercantile credit is so much shaken, the command of so large a sum (or even one quarter of it) would give to any merchant great advantage over his brethren. That of course it would excite envy and ill-will among that respectable class of citizens; and let the Government act as they might, blame would light on them. That this was a contrivance to relieve from due responsibility the proper officer, and leave in the stead the responsibility of some one not approved of in the mode required by the Constitution. That it opened the door to a species of patronage, of all others the most pernicious.

To these observations it was replied: That the

business in question ever had been, and ever must be, managed by subordinate individuals. That when bills were purchased for the public by the banks, it was always done by the agency of the cashiers. That it was impossible the Secretary of the Treasury could be accountable for the conduct of such business, and therefore his responsibility would be merely nominal. That the agent was to be appointed by the Commissioners of the Sinking Fund, and the respectability of the characters which form that board, left no room to apprehend an improper appointment. That if power to contract with the banks alone was given, the public would be entirely in the hands of those who direct the banks, whereas they ought to have the benefit to be derived from competition.

The amendment was lost—yeas 9, nays 17, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

It was then moved to strike out the sixth section, which gives authority to appoint an agent for making loans in Europe.

In support of the amendment it was said: That if any agent were necessary, it ought to be a diplomatic character; because such character, sent to and recognised by the Government of the country, would necessarily have more credit than a common agent. That if any applications should, in the course of such business, be necessary to the Government, it could not be made effectually or properly, unless by such a character. That it did not consist with the dignity of the United States, that an agent charged with an affair so important, should be obliged to apply to under Secretaries, if any business were to be transacted with the Ministers. That the difference of expense (one thousand five hundred dollars annually) was too trivial to enter into so important a consideration; for that one quarter per cent. on six millions would be fifteen thousand dollars. That all business of this sort had hitherto been transacted by the diplomatic servants of America, and had been well transacted. That no man ought to be employed or trusted in so weighty a concern who had not weight of character sufficient for the place of Minister. That if obligations for money borrowed were to be signed, it would have a better appearance that they should be signed by a Minister than by a common agent. That the idea of sending over a mercantile man to do a thing of this sort, founded on an opinion that such men understood it better than others, was unfounded, because it was as foreign to their ordinary occupations as to those of other people. That information on the subject could only be obtained on the spot, and must, from the nature of the case, be derived principally from the bankers of the United States. That the loan must be conducted principally by their skill, and be supported, in a great degree, by their influence; and if not aided by anything more than a common money agent, must

APRIL, 1802.

Proceedings.

SENATE.

rest solely on their credit; because the money lenders could only know through them that the United States were pledged. That the appointment of such an agent, considered in connexion with the other agent already mentioned, might lead to a suspicion that it was intended to provide for favorites by lucrative jobs.

It was answered: That there could be no propriety in sending a Minister for the mere purpose of borrowing money. That persons might be found well qualified for the transaction of this business, who did not possess all the qualifications necessary for a Minister. That the difference of expense was more than fifteen hundred dollars; for that a Minister was entitled to a year's salary (as outfit,) so that in effect the expense would be greater by six thousand dollars. That it might not perhaps be necessary to send any person; and if it should be, then it was wise to send one at as small an expense as possible. That it was the duty of the Senate to economize the public money, and people would be more apt to lend to a nation in which economy prevailed, than to one which lavished its funds on useless officers.

The amendment was lost. The bill was then ordered to a third reading.

THURSDAY, April 22.

MR. BROWN, from the committee to whom was referred, on the 17th instant, the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," reported it without amendment.

MR. ELLERY, from the committee to whom was referred, on the 21st instant, the bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, reported it without amendment.

Agreeably to notice given yesterday, MR. BRADLEY had leave to bring in a bill to establish, by law, a more uniform manner of holding elections in each State; which was read; and on the question, Shall this bill pass to the second reading? it was determined in the negative.

The bill fixing the time for the next meeting of Congress was read the second time; and on the question, Shall this bill pass to the third reading? it was determined in the negative.

The Senate resumed the consideration of the amendments reported by the committee to the bill for establishing the Government of the Territory of Columbia; and having agreed in part to the amendments reported, on the question, Shall this bill be read the third time, as amended? it was determined in the negative—yeas 13, nays 13, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, S. T. Mason, Nicholas, and Wright.

NAYS—Messrs. Bradley, Dayton, Dwight Foster, Howard, Logan, J. Mason, Morris, Ogden, Olcott, Stone, Tracy, Wells, and White.

A message from the House of Representatives

informed the Senate that the House agree to some and disagree to other amendments of the Senate to the bill, entitled "An act further to alter and establish certain post roads."

The bill, entitled "An act for the relief of Theodosius Fowler," was read the third time; and, after debate,

Ordered That the further consideration thereof be postponed until Monday next.

FRIDAY, April 23.

The Senate resumed the second reading of the bill to regulate and fix the compensations of the officers of the Senate and House of Representatives.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the amendments reported by the committee to the bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of the loans made by the State of Maryland for the use of the city; and having agreed thereto,

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two.

Ordered, That it be recommitted to Messrs. ELLERY, CLINTON, and J. MASON, the original committee, further to consider and report thereon.

The Senate resumed the second reading of the bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States.

The Senate resumed the second reading of the bill for the relief of Fulwar Skipwith.

Ordered, That this bill pass to a third reading.

Ordered, That this bill be committed to Mr. MORRIS, Mr. DAYTON, and Mr. NICHOLAS, further to consider and report thereon.

MR. OGDEN presented the petition of John C. Symmes, praying relief from the operations of an act giving a right of pre-emption to certain persons who have contracted with J. C. Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the river Ohio; and the petition was read.

Ordered, That it be referred to Messrs. BRECKENRIDGE, OGDEN, and BRADLEY.

A message from the House of Representatives informed the Senate that the House have passed a resolution, authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the 26th instant, in which they desire the concurrence of the Senate. They have passed the bill sent from the Senate, entitled "An act to amend the Judicial system of the United States," with amendments; in which they desire the concurrence of the Senate.

The resolution for adjournment was read, and ordered to lie for consideration.

The Senate took into consideration the amend-

SENATE.

Redemption of the Public Debt.

APRIL, 1802.

ments reported by the committee to the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes; and having in part adopted the amendments, the further consideration of the bill was postponed.

Mr. ELLERY, from the committee to whom was referred, on the 21st instant, the bill to amend "An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," reported amendments; which were read, and ordered to lie for consideration.

SATURDAY, April 24.

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill, entitled "An act further to alter and establish certain post roads;" and

Resolved, That they do insist on said amendments, ask a conference thereon, and that Messrs. JACKSON and TRACY be the managers on the part of the Senate.

The Senate took into consideration the resolution of the House of Representatives authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the 26th instant: and

Resolved, That they do not concur therein.

The bill, entitled "An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States," was read the third time.

Ordered, That the further consideration thereof be postponed until Monday next.

REDEMPTION OF THE PUBLIC DEBT.

The bill, entitled "An act making provision for the redemption of the whole of the public debt of the United States," was read the third time.

On motion, to strike out, section first, after the word "that," in the second line, to the word "hereby" in the twelfth line, and insert the words,

"In addition to all appropriations heretofore made for payment of the principal and interest of the debts of the United States, (other than surpluses of revenue) so much of the duties on merchandise and tonnage as will amount, with the said provisions, to an annual sum of seven millions three hundred thousand dollars, be, and the same is hereby, appropriated to the Sinking Fund; and the said sum of seven millions three hundred thousand dollars is:"

Mr. MORRIS.—Mr. President, there is a part of this act which is proper, wise, and I believe indispensable. But in order that it may produce the desired effect it is essential that the intention of it be rendered clear and intelligible. This is far from being the case at present, and therefore I shall offer an amendment for that purpose. It gave me great pain (the other day when I asked an explanation from those who are its supporters) to be referred to a report from one of our officers. Does it consist with propriety to pass a law which

even those who vote for it can in no other way explain than by such a reference? If gentlemen mean to derive credit from this measure among the people of America, it must be understood here, and if they expect to borrow money in consequence of it in Europe it must be intelligible there. The state of our finances renders such loans in my opinion indispensable. But there is an act lately passed, which will arrive in Europe, before any loan can be made, and which will materially injure the credit of this Government. I mean that which repeals a tax on stills and distilled spirits, that had been solemnly pledged for the payment of the public debt. The money negotiators in Holland have before them every one of our acts which relates to the public debt. The instant you propose a new loan, they will produce that repealing law, and tell you their confidence is shaken. To remove the unfavorable impression acknowledging the repeal, you aver that you have (in lieu of it) given a pledge much more important—a pledge of seven million three hundred thousand dollars, and you refer to this act. They read it and say "we can't understand it. You may perhaps have meant to appropriate the sum you mention, but it conveys to our minds a different idea. We can perceive no such pledge." My reason for believing that this will be their language is, that I could not understand the act myself; and that when I asked (from its patrons) an explanation, they did not pretend to give it, but referred me to the report of the Secretary of the Treasury. By reading that report I have indeed discovered what it means, but let me say, however, that this meaning is not truly expressed in the act. It was drawn by some person whose vernacular language is not the English, and bears on the face of it evidence of that fact, as I shall presently have occasion to show. This may have occasioned the obscurity which I wish to remedy.

In order that I may convey to the minds of others, those ideas which I have collected from reading and considering the report to which I was referred, I beg leave to make a simple distinction between the first object of the act, which is to appropriate seven million three hundred thousand dollars to the sinking fund, and the subsequent directions how that fund is to be applied. The first object is to be effected by the first section, which, if we are to judge by the Secretary's report, is intended to appropriate (in addition to former appropriations) so much as may be necessary to make up that sum of seven million three hundred thousand dollars. But this does not appear to be the object, if we must judge by the words of the bill. This meaning is not to be collected from them, either on the first impression, or when closely examined. The words are:

"Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the duties on merchandise and tonnage as, together with the moneys, other than surpluses of revenue, which now constitute the sinking fund, or shall accrue to it by virtue of any provisions heretofore made, and together with the sums annually required to discharge the annual interest and

APRIL, 1802.

Redemption of the Public Debt.

SENATE.

charges accruing on the present debt of the United States, including temporary loans heretofore obtained, and also future loans which may be made for reimbursing, or redeeming any instalments, or parts of the principal of the said debt, will amount to an annual sum of seven millions three hundred thousand dollars."

Now, in order that we may clearly comprehend this enigmatical clause, let us have recourse to algebraic expression. Let A be taken from the former appropriation and B for the additional sum, to make up the seven millions three hundred thousand dollars; which, for brevity sake, I will call seven millions. It is evident that every increase of A, must operate to the diminution of B. If A be five millions, B will be two millions. If A be six millions, B will be one million. If A be seven millions, B will be reduced to nothing. In order therefore to determine the amount of B (the present appropriation) nothing more is necessary than to fix the amount of A. By referring to the clause just read, it will appear that A is to consist of the present sinking fund, of the interest of, and charges on our existent debt, and of the interest of future loans to redeem that debt. If then the two former articles amount to five millions, and loans be made, the interest thereof will amount to two millions, A will be seven millions; although the loans so made, should be applied to extinguish an equivalent amount of the present debt. For let that be made certain, which is made capable of being reduced to certainty. Let the present sinking fund and the interest of the present debt be stated in figures at their precise amount. The amount will form a deduction from B, the appropriation now made, according to the tenor and express words of the clause, leaving it less by that amount. And after it is so lessened, a further diminution is to be made for the interest of future loans. This, sir, is the meaning of our appropriation, when properly analyzed; for if it be not, what I pray is the case of the words, "and also future loans which may be made for reimbursing or redeeming any instalments or parts of the principal of the said debt?" These words cannot relate to those which immediately precede them, for although the present debt includes temporary loans heretofore obtained, it cannot include future loans which may be made. The reference therefore must be to the interest on these future loans as a distinct object. Will it be pretended that this constitutes any part of the present appropriations? Is it not clear that if such loans be applied to the purpose for which they are made, they must extinguish a part of the existing debt? And is it not clear, also, that each of the three articles specified must diminish the present appropriation? Invert the order and say; we appropriate seven millions, less the sinking fund, and less the interest of our present debt, and less the interest of that we may borrow to pay that debt. Take the first article at three millions, and each of the others at two; then seven millions less the sinking fund will be four millions, and less the interest of future loans to pay that debt will be nothing. Here then is an appropriation (or rather here is the semblance of an appropriation) which means (or may be made to mean) just nothing.

But now I will admit, sir, for argument's sake, that some other construction may be given to this clause, (which, however, I cannot devise,) and then I ask, is it prudent to go to Europe with a law of such doubtful complexion, as the ground on which to borrow money? Is this wise? Let me again repeat, that you have injured your credit by a former act. I mean not to arrogate the merit of superior knowledge on this, or, indeed, on any subject; and, if anything which fell from me the other day, had that appearance, it will, I hope, be attributed to the true cause. No man can always be so completely master of himself, when harassed by the flippancy of debate, as not to drop some hasty expression. It has happened that, being on the spot, I have collected information respecting this business, which gentlemen who have not had the same opportunities may not possess. This information, I hold it my duty to give, and every Senator will draw from it his own conclusions. When you are about to open a loan in Amsterdam you must apply to the commissioners or bankers whom you have already employed. Send thither what agent you may, he must employ them, because others will not undertake it; and for two reasons—first, there is a kind of mercantile honor which will restrain them in a considerable degree, and, secondly, they would apprehend the opposition of those from whom the business was taken, and who certainly could throw great obstacles in their way. Under these circumstances, in which you apply to these bankers, and with this law in your hand, what will you say? They will tell you they cannot understand it; that you have taken away one pledge which they understood and on which they relied. They will ask if this new pledge cannot be taken away as easily as that? Admitting the sincerity of your professions, they will ask what security they have against a change of sentiment in the Legislature? They will inquire what check there is in our political organization to prevent a violation of public faith; and how far such checks are effectual? Suppose a satisfactory explanation can be given in answer to these essential inquiries, they will proceed to ask an explanation of the law itself. They will analyze it, and will doubt of the meaning, or, rather, they will perceive in it the meaning which has already been pointed out. How will your Secretary of the Treasury, or his agent, obviate objections? Must these bankers be, as we were, referred to his report? If so, will they not object that this report forms no part of the law? Will they not put the question which suggests itself at the first blush to the most simple observer, Why, if this was your intention, did you not express it in terms so clear as not to be misunderstood? It will not be decent to reply, that the law was drawn by a foreigner and passed by the two Houses of Congress in blind confidence. These bankers understand English; they will not commit themselves lightly, and even if they should, the success would be doubtful. Those who have opened other loans, and who, from that circumstance, stand in opposition, will point out to money-lenders the defects in this law. These people, they

will say, speaking of us, meant to pledge seven millions three hundred thousand dollars, or they did not. If they meant it, they would have expressed their meaning in such way as could admit of no doubt. If they did not mean it, they could have had no other intention than to deceive by a false appearance. They, but a few days before, repealed a law pledging, in terms clear and unequivocal, a specific tax to the payment of their debts, and now they offer a vague and general appropriation, in terms obscure and equivocal.

This, Mr. President, is a subject in which neither I nor my friends are any otherwise concerned, than as it relates to the national honor and credit. It is not a measure for which we feel responsibility. It does not excite in us a spirit of opposition. But we wish, I repeat it again, to save the honor and the credit of our country. Gentlemen have thrown away the internal taxes, and are about now to tell the American people that, without the aid of those taxes, they can provide for the current service, and appropriate upward of seven millions as a provision for the redemption of the whole of the public debt. This is what they pretend, and I am bound to suppose that this is what they mean; for I cannot presume that they have the wish, much less the intention, to impose upon the people by a vile trick. Surely, they cannot mean, by using an unintelligible jargon, to cheat their fellow-citizens into the idea, that above seven millions are appropriated to this object, when in fact there is no such appropriation. It would be too pitiful a device, and I cannot believe that any gentleman would descend to an expedient so poor, so base, merely to catch a little popularity. Presuming, then, that they really wish what they say, I will now offer an amendment to express that meaning in terms simple, clear, and definite; terms which can easily be understood, and which cannot be misunderstood. I move, therefore, sir, that from the word "that" in the second line, to the word "hereby" in the fourteenth line be struck out, and the words "in addition to all appropriations heretofore made for payment of the principal and interest of the debts of the United States, (other than surpluses of revenue,) so much of the duties on merchandise and tonnage, as will amount with the said appropriation; to an annual sum of seven millions three hundred thousand dollars be, and the same is hereby, appropriated to the sinking fund, and the said sum of seven millions is" be inserted.

Mr. WRIGHT.—I hope we shall not agree to the amendment. This ought not to be done, as appears by the gentleman's own argument. He has said that this law was in the language of a foreigner—meaning, I suppose, Mr. Gallatin. The gentleman has attempted to show the propriety of this amendment, very simply, by using the letters A and B; but he never could get me to C. The language of the act as it stands, is very good, sir. The gentleman finds it very difficult to understand; but, I, sir, understand it fully, and I think it correct and very proper. The Secretary of the Treasury has told us what we ought to do in the

premises. He knows, and it is right to do as he says.

Mr. S. T. MASON said: As I understand that amendment, sir, it is to deprive the bill of a very important part of its provisions; to prevent any portion of this money from going to the payment of interest on loans hereafter to be made. If that is the case, I must be opposed to it; and that seems to me to be the intention.

Mr. BRECKENRIDGE.—When that amendment, sir, was first shown to me, I did not perceive any material difference between the amendment and the bill. But, sir, if this word "debt," used in the amendment, is to prevent moneys hereby appropriated from going to the payment of new loans, it varies materially from the bill.

Mr. MORRIS.—I did hope and believe, Mr. President, that the distinction I had taken, and which, at the time, appeared to me almost unnecessary, would have had the intended effect of preventing observations, such as we have just heard. I must again request gentlemen to take notice, that the clause to which I have moved an amendment, relates not to the application, but to the constitution of the proposed fund of seven million three hundred thousand dollars. After determining what that fund is to consist of, the act goes on to declare in what manner it shall be applied. The question is not now on the end of the journey, but on the beginning. The gentleman from Virginia and the gentleman from Kentucky, will see that their observations apply, *not* to the manner in which this fund is *now* to be constituted, but to the directions by which it is hereafter to be used; and these directions are contained in the subsequent parts of the act. The plain case is, seven millions three hundred thousand dollars are to be annually applied in payment of our debts. This is a clear and simple proposition. What gave rise to all our difficulties the other day, was, that we really could not understand the first clause of the act. And when we asked an explanation from those who were presumed to understand, as they seemed determined to vote for it, we were constantly referred to the Secretary's report. This last chapter of the Apocalypse, can, it seems, be exposted, only by that first chapter of Genesis. In obedience to the orders of honorable gentlemen on that day, I have since read, examined, and considered the report; and if they also are acquainted with it, they will see that the amendment now before the House, comes up precisely to the ideas contained in the report. It appropriates, in addition to former provisions, so much as will make up the contemplated sum. This form of expression has the advantage, that it must be understood, and cannot be misunderstood. Nay, it obviates all doubt which may arise upon former laws; for it is perfectly immaterial, whether former provisions amount to one million or to five millions, since the balance, be it what it may, is to be made up from the revenue. Is the revenue mortgaged to the amount of only one million, the additional mortgage, by the act, will be six; is it mortgaged to the amount of five millions, the additional mortgage will be one; in short, the final effect will be

APRIL, 1802.

Redemption of the Public Debt.

SENATE.

the same in every supposable case, and your revenue will stand pledged, eventually, to the amount required, of seven millions three hundred thousand dollars. This, gentlemen say, is their object. I do not call in question their sincerity; but, instead of a clause which does not clearly express that object, I have offered one which does clearly express it. If they reject the amendment, they must see the natural conclusion. I leave it, therefore, with them to do as they please.

It passed in the negative—yeas 10, nays 16, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

Mr. MORRIS.—I must now move some other amendments to this section, which will relate only to the language; the first is, to strike out the words, "including future," and insert the words, "and the," so that, instead of the present debt including future loans which may be made, the clause may read "the present debt, and the loans which may be made." I suppose the gentleman will reject this, too, and declare, by their votes, that the *present* debt includes *future* loans.

Mr. WRIGHT.—Mr. President, this clause is much better as it is; it is more full and comprehensive. It is according to the meaning and object of the Secretary's report, and I hope it will not be altered.

Mr. DAYTON.—If gentlemen wish to prove that future loans, by which I suppose they mean, if they mean anything, or know what they mean, loans hereafter to be made, are included in the present debt of the United States, they have now a fine opportunity of showing it by their votes, and should reject the amendment.

Mr. WRIGHT.—I insist upon it, sir, the bill stands better as it is; it will not admit of alteration. The language is right enough; it comes up to the object of the Secretary, and to what is proper to be done. I will not agree to alter it.

This amendment was carried.

Mr. MORRIS moved the same amendment in the beginning of the third section.

Mr. M.—This correction of style consists with that which the Senate have already adopted. In fact, sir, the vicious expression frequently occurs, and is merely a Gallic idiom. The word *including*, is a translation of the words *y compris*, and in a French law would do very well, but in English, it is nonsense.

Mr. THEODORE FOSTER.—Mr. President, the words, as they now stand, are "the present debt of the United States, including future loans which may be made, for reimbursing any instalments or parts of the same." This is a common mode of expression. It is more comprehensive than the amendment proposed. I find the same expression occurs frequently. It will take time to alter it, and therefore I hope the amendment will not be agreed to.

Amendment lost—yeas 10, nays 14.

Mr. MORRIS moved several other amendments to the style, most of which were lost.

Mr. MORRIS.—The amendment I now mean to offer is not merely verbal, but of substantial importance; it is, strike out, in the fourth section, the words, "six years after the date of the same, and that the rate of interest thereupon shall not exceed five per centum per annum, nor the charges thereon, the rate of five per centum on the capital borrowed;" and insert the words, "ten years from the period when the same shall be made, and that the total amount of the interest and charges shall not exceed six per cent. per annum on the capital thereof." The object of this amendment, sir, is simply to authorize the Commissioners of the Sinking Fund to make loans not reimbursable in less than ten years, if they should find it advisable, instead of six years, as stated in the act. The terms I propose are the same, viz., not to exceed six per cent. interest; for the five per cent. commission and five per cent. interest, on a six years' loan, amount to six per cent. interest, or very nearly so, as gentlemen will see at once, by an operation of common arithmetic. If, with the aid of logarithms, they choose to make the calculation accurately, they will find it is within four cents of six per cent. The effect then of the amendment is, to empower the Commissioners of the Sinking Fund to borrow for a term of ten years, if they cannot obtain money on a loan for six years. By stating merely the interest, which is not to be exceeded, it will be in the power of those who execute the business so to arrange it as may be most suitable to the lenders; by commissions, premiums, or otherwise. This, sir, I consider as important; because we cannot, at this distance, determine exactly on the plan which will suit those who are to lend the money; and the way in which loans are made is to inquire into circumstances, and discover the bait which lenders will bite at. One circumstance is important, and must therefore be mentioned. Loans reimbursable at a distant day are more valuable than those of a shorter date. The reason is clear. Those who place their money in public funds, to receive a regular interest, find reimbursement inconvenient, because it compels them to make a new disposition of their capital; and those who buy with a view to subsequent sale, at an advanced price, will of course prefer stock of a durable nature, because it gives sufficient time to look for that advance. Those who, at the close of the American war, bought into the British three per cents., then but little above fifty per cent., and sold out when they had risen much above eighty per cent. (which happened to be the case shortly before the present war,) received near six per cent. interest on their capital, during the investment, and a profit of sixty per cent. on the sale. The English funds are at the door of the Dutch capitalists. They can watch their course, and provide for events as they happen. These and other inducements, to lend money at or near home, will operate against you. It is impossible to say what terms will suit these people, but it is easy to say that certain terms will not suit them. I think you cannot

reasonably expect to borrow money on a short credit, because, if the peace continues, the British stock (the interest of which has for more than a century been regularly paid) offers so clear a prospect of gain, from the rise, that those who have money will prefer it to your obligations. When the British funds rise so high that investments in their three per cents. will not give more than five per cent. interest, you will perhaps succeed in borrowing for six years; but if the war should recommence, you will not, I believe, be able to get money on any terms. I shall press this amendment no farther. What I advance is on the ground of private information, from whence I collect that American obligations bearing an interest of five per cent. were in Amsterdam three per cent. below par. So long as this is the case, it is idle to expect that you can borrow at five per cent. for a short term, because any person inclined to lend in that way would rather purchase the obligations at ninety-seven per cent. I leave gentlemen who are connected with the Administration, and who have I suppose correct information from the Head of the Department, to judge for themselves.

The amendment was lost.

Mr. MORRIS.—The untoward state of so many amendments is a sufficient indication that I need not trouble either the Senate or myself with any thing more of that sort. But I feel it my duty to suggest to gentlemen, whose act this is, the propriety of correcting that part of the fifth section which speaks of purchasing remittances. I the rather avoid all attempt to amend it, as I must again acknowledge my ignorance. I know not what is meant by purchasing remittances. I know what it is to purchase bills, bullion, &c., to make remittances. Whether it is intended that when other people have made remittances the things by them sent shall be purchased, or whether (under this vague term) cargoes of produce and of all kinds of merchandise are to be included, I know not. Whether, by the help of the agent contemplated in this clause, the United States of America are to become a trading company, and the loss on bad speculations in trade, is to be made up by taxes on the people, I cannot discover. This last, however, would seem to be the case, from that provision in the section which appropriates so much from the revenue as may be necessary, to pay "the extra allowance or commission resulting from such transactions, and the deficiency arising from any loss incurred upon any remittance purchased or procured." I shall not repeat my objections made the other day to the same agent; but I must say, that it behooves gentlemen to render this part of their act more explicit, unless it be indeed their intention that this agent shall make commercial speculations, and when successful pocket the profit—when unsuccessful saddle the public with the loss.

No answer was made to these observations.

The bill was read a third time, and, on the question, shall it pass:

Mr. MORRIS said,—Mr. President, I have always thought this measure unwise; from what has now passed, I think it worse. In the course of my ob-

servations I must refer gentlemen to their favorite document—the Secretary's report. But I suppose nothing I can say will avail; they seem determined to pass the law at any rate.

I said the other day, that the surplus of all our revenue beyond the appropriations, was already pledged to the sinking fund. This gentlemen had the goodness to deny. I pray they will now be pleased to turn to the eighth page of the Secretary's report. They will there find, in the eighth section, among the provisions for the redemption of the public debt, "All surpluses of the revenues of the United States, which shall remain at the end of any calendar year, beyond the amount of the appropriations charged upon the said revenues, and which during the session of Congress next thereafter, shall not be otherwise specially appropriated or referred by law."

It is indeed said, in the third section of the fifth page, that, from certain defects in the mode of doing business, the amount of this surplus cannot be ascertained. He tells us it is uncertain "whether the proceeds of loans should be included in the revenue." I pray gentlemen will attend to this expression. Your Secretary considers it as doubtful whether loans make part of the revenue; and tells you the construction as to that point has not been uniform. He sends you an account to show that, instead of a surplus, there had been a deficiency of near a million from the establishment of the Government to the close of the year 1799; and concludes from that circumstance, that the accounts have been irregularly kept. As to the manner in which the books have been kept, Mr. President, it is of no consequence. It appears by this very report, that, let them have been kept as they may, there is now a surplus of more than three millions of cash in the Treasury. We have just seen that the whole surplus revenue, be it what it may, is appropriated to the payment of our debts. This sum of three millions, therefore, no matter how it got into the Treasury, is already bound to the payment of our debts. As to the difficulties or the blunders in keeping our books, supposing any such to exist, they may be obviated by the Secretary himself, or, if not, it will be easy to make the needful provisions by law. The appropriation formerly made, is not perhaps sufficiently clear and definite, but until the objections be distinctly stated we cannot judge of them, neither can we pretend that any law, much less the law now proposed, can be necessary to remove them. Last of all, can it be pretended that the appropriation does not exist? Let any gentlemen show a single dollar of revenue, except that from the post office, which is not now appropriated. Gentlemen have said otherwise, but let them show it. A part of the internal revenue, indeed, was not specifically pledged, but the whole has been repealed. While I now speak, every farthing of surplus is appropriated to the sinking fund. What then is the effect of this act, fastidiously pretending to redeem the whole public debt? Will it bring one dollar into the Treasury? Or is there a magic in the words of it, by which debts can be paid without money? You undertake to appro-

APRIL, 1802.

Redemption of the Public Debt.

SENATE.

appropriate seven millions, and you have it not to appropriate. I say seven millions, leaving out the additional three hundred thousand, for I must now, for the facility of comprehension, confine myself to round numbers. Your Civil List, including foreign affairs, amounts to a million; your Navy to a million; your Military Establishment to a million and a half. Admit, for a moment, that your boasted economy will reduce these items, (by some trifle,) you see at a single glance, that if this act be passed, ten millions and a half of revenue will be required to meet your appropriations. Now, sir, what is your revenue? When this subject was in question, I had the honor to assign my reasons for believing that the duties would not exceed eight millions, supposing them to be regularly and honestly paid. What have you in addition? Arrears of taxes, sales of land, and the post office. The arrears of taxes will be noticed presently. They form part of the surplus already pledged. As to the post office, the fifty thousand dollars to be derived from that source ought to be expended in the extension of communication; at any rate it is a trifle. The sales of lands, then, is the only fair addition to the duties. I know nothing of the circumstances attending your lands. This fund may be prolific; it may produce nothing. I have, however, many reasons to believe that it will yield less than it has done, but admit that, (instead of 400,000 dollars, the sum estimated by the Secretary,) it should amount to half a million. Admit that your duties produce eight millions, you can then count upon eight and a half. Deduct for the support of Government, three and a half, there remains five. And on this you are about solemnly to pledge yourselves for seven. Let gentlemen consider well what they do. Here is no logical, no metaphysical argument. You can neither deceive others, nor have the poor excuse of ignorance for yourselves. It is a question to be solved by the first rules of arithmetic. You are now about to vote against arithmetical demonstration, and that vote shall be recorded. This, I tell you, is one of the most serious subjects you have yet touched; and seriously will you have to answer for the vote which is now to be given. Consider, then, what you are about. You are about to make appropriations in the face of facts. There must be a deficiency of funds. You know there must. Do you mean, then, to come forward next session, (when that deficiency becomes notorious) and repeal this law? Will you make a solemn mockery—a mere farce—of legislation? What excuse can you devise? Folly is not sufficient. Nothing but madness—downright madness—which indeed is an excuse for anything.

Gentlemen may, perhaps, suppose they can cover themselves under their confidence in the Secretary. I will not examine the decency of that defence, but I tell them it will not serve their turn. Look at the language of this Secretary, in whom they put their trust. In his report of December last he acknowledges that our revenues (taken at the amount he states in that report) will fall short of satisfying this appropriation, and the cur-

rent service, by two hundred thousand dollars; but that sum will he supposes be supplied by an economy to the same amount. In the letter of the 31st of March, to the Chairman of the Committee of Ways and Means which forms their report, and to which we have been so often referred, as the Secretary's report, speaking of the \$7,300,000, he says: "The ability of the United States, with their present revenue, to apply annually the sum to that object, rests on the correctness of the estimates annexed to that report." Your Secretary is a man of sense. He knew better than risk his reputation on this business. He tells you, expressly, that your ability, even with the revenue we possessed prior to the repeal of the internal taxes, could not be relied on, if those estimates were fallacious. Now sir, if that fallacy has not been demonstrated, it has at least been shown that the correctness of the estimates is questionable. And yet gentlemen are about to adopt these doubtful estimates, and give to them the weight and credit of admitted facts. Your Secretary goes on to say, in the same page, that these estimates "will not be affected by the repeal of the internal taxes, *provided*, that the retrenchments made in the expenditure shall have been equal to the sum of \$650,000, for which credit was taken on account of those taxes." Is, then, the Secretary pledged by anything in this report? Not at all. He tells you if your revenue is sufficient, you can make the appropriation, and as you retrench your expenditures, you may diminish the taxes. He tells you, if the retrenchment be equal to the diminution, the diminution will not affect the appropriation. But he tells you expressly, that even if the truth of his estimates be admitted, the appropriation proposed will occasion a deficiency of \$200,000, to which must be added 650,000 more for repeal of the internal taxes. Here then you have a deficiency of \$850,000, to be made up by economy and retrenchment. The language of your Secretary, therefore, is, if you admit the revenue to be \$9,950,000, and reduce your expenditures for the support of Government from three millions and a half to \$2,650,000, you will then have a residue of \$7,300,000. But will your revenue amount to so much? No. Have you brought down your expenditures to a sum so small? No. Does the Secretary affirm either of those facts? No. When you shall find yourselves egregiously mistaken, and resort to your Secretary, he will tell you, that he gave you his calculations, and his reasons, and his opinions. That he told you so. But you reasoned and judged and acted for yourselves. Nay he will prove that, so far from vouching that your revenue would amount to the required sum, he had not only expressed a doubt of the fact, but went on to suggest an expedient by which the deficiency might (in appearance at least) be supplied. In the same page 21, he goes on thus: "But in order to run no risk on that ground, I would suggest a modification in the manner of making the appropriation which will effectually guard us, should the annual amount of the net receipts in the Treasury, be more affected by the restoration of peace than has been expected." Here then

SENATE.

Redemption of the Public Debt.

APRIL, 1802.

you see that your Secretary is already employed in guarding against the deficiency, and against the complaints and reproaches which that deficiency must occasion. You will be pleased also to take notice, that this guard is to consist in the manner of making the appropriation. Thus it would seem that your Secretary thinks he can contrive to appropriate from your revenue in such a way as to be effectually guarded, if the revenue does not produce the sum appropriated. But, before you trust to these contrivances, you will do well to consider, that a determination to pay seven millions will not make seven millions.

Let us now look at the Secretary's expedient. We find it in the second section of the twenty-fifth page. After mentioning, in the section which precedes it, a surplus of more than three millions, which had been relied on for special purposes, and of which I shall presently take some notice he goes on thus: "Those estimated three millions may, therefore, be safely relied on in addition to the permanent revenues; and the modification which I would suggest, consists in making the payment of the eventual demands, which may become due to foreign nations, conditionally payable out of the proposed appropriation of \$7,300,000 for the debt, with a proviso, that both those demands and the temporary loans might be paid out of other moneys, if the situation of the Treasury should permit it. The effect of this modification would be, eventually, to draw the three millions reserved to assist the current revenues, if these should fall short of the estimates." We find here perhaps the source of that enigmatical language which gentlemen have with such solicitude defended against amendment. Before I examine, however, this modification of the plan held out to us in December, permit me to say some few words about the three million fund. The Secretary tells us these three millions were considered as a provision to meet the probable demands which might arise under the convention with France and the treaty with Great Britain. They were to be derived from the surplus of specie in the Treasury, a sale of bank stock, arrearages of the direct tax, and the stamp duties. The repeal of these last, he tells you, will be more than balanced by arrearages of the internal taxes, which amount to a million. The cash in the Treasury exceeds three million. The bank stock is worth more than a million. Thus we have more than five million, besides the arrears of the direct tax. The conclusion of the Secretary, therefore, that these funds may be relied on for three millions, is so much the more correct, as he has now, in cash, in the Treasury, a greater amount. I must also remind gentlemen of the distinction they dwell on the other day between debts and demands; a distinction which runs through the law before us. They have insisted that these demands form no part of the debt properly so called. Now they will be pleased to recollect, that the three millions of surplus revenue are already pledged to the sinking fund for payment of the debt. Your Secretary, however, sets it apart to pay these demands, which it seems are no part of the debt; and now he pro-

poses that, by way of modification, it constitute, in aid of the revenue, a part of the new sinking fund, and that this new sinking fund be charged with payment of the demands. Thus, after running round the circle, you have not advanced a single inch. Pretending to make an appropriation of seven millions from the revenue to the sinking fund, it is proposed to take more than three millions from that very fund to eke out deficiencies of the revenue. But, after all, this contrivance will not answer the intended purpose. All the surpluses, be the amount what it may, are already pledged to the payment of our debts; and this amount, be it more or less than the three millions stated, must eventually be known with precision. As far as it goes, it is a provision already made for payment of the public debt; and if, for convenience, it be diverted to any other purpose, it must be afterwards replaced by an equivalent sum. It is, then, proper to view the whole subject together. Your Secretary tells you that upwards of seven millions annually will be required, for three years to come, to pay the principal and interest of your debts, and to this must be added at least one million more for the demands under the convention with France and England. Thus you have, in three years, to pay twenty-four millions. Three millions and more are in hand, belonging to the sinking fund; of course you have the means to pay off these demands. But, seeing a great probability that your revenue will fall short, these three millions are to be applied (in aid of it) to make up the seven millions which should be derived solely from the revenue. It is then a loan from the present sinking fund to the revenue, and must be repaid. It operates, we will suppose, to reduce the twenty-four millions to twenty-one millions; still those twenty-one millions must be paid within three years, and that from the revenue. You, indeed, authorize a loan in Europe to meet emergencies, but you repel the idea of paying your present debt by incurring a new debt to a greater amount. You do not, I presume, mean to subject yourselves to this imputation. Of course, the sums so borrowed must be applied in addition to the seven millions. These foreign loans, then, like the three millions borrowed from the sinking fund, are merely for convenience; and the twenty-one millions are still to be paid within three years, from the revenue of those years. If there be a deficit, therefore, of two millions annually, it must eventually appear and be felt. You may, indeed, by this contrivance, provide for the exigency of the moment, but it amounts to nothing. You may amuse yourselves, from morning till night, by taking money out of one pocket and putting it in the other, you will not be one farthing the richer. Suppose, sir, your revenue should fall short of your expectation; suppose that, altogether, it should amount to but eight millions. You pledge, by this act, seven millions. Of course there remains but one million to pay the current expenses, which will require at least three millions. I presume that gentlemen mean to make this seven millions a real appropriation, notwithstanding the mysterious words of their law, and

APRIL, 1802.

Redemption of the Public Debt.

SENATE.

not a mere trick. They surely do not mean to deceive the American people by false appearances. What, then, will they do should they find a deficiency of two millions? Will they come forward again with a violation of the public faith, and repeal this law, after making loans on the credit of it? Or, will they come forward and lay two millions of taxes upon the United States? Here they perish. They have thrown away one million, and must lay on two. We may, perhaps, he told that we wish to perpetuate the national debt. We may hear the trite adage that a public debt is a public blessing, and other pretty sayings. But away with all this paltry witticism; the subject is too serious.

Let it be remembered, sir, once for all, that those who make the necessity, are those who lay the tax. If then by this law taxes become necessary, they impose a tax who vote for this law. Yes, you are about to impose a tax of two millions on the American people. Under the circumstances to which they will be reduced, that tax will be extremely burdensome. It will be oppressive. You are about to lay, without necessity, without reason, a most heavy tax. It is madness, it is worse than madness. You will drive many valuable citizens out of the United States, to avoid the pressure of taxation, into Canada and Louisiana—thus you will add to the wealth and strength of neighboring nations, of nations who may soon become hostile. This is treason!—high treason against the interests of our country! Look to it well. You who vote for this law, shall answer for the pernicious consequences.

It has been said, and may perhaps be repeated, that you can reduce the expense below the present standard. You cannot. I do not mean that you cannot make a piece of paper in the form of a law to that effect, but imperious circumstances will render the reduction impracticable. I ask which branch of service is to be reduced? Is it the marine? Already your little force is employed in blocking up a piratical port, and you may to-morrow hear that Morocco has taken part with Tripoli. This may increase, but cannot diminish the expense of your Navy. You may indeed destroy your ships, and leave commerce to take care of itself. This I hear is a favorite idea with some men. But what, in this case, is to become of your revenue? Among the other wise acts of this Congress, we have thrown away every means of supporting Government and paying debts, except those which commerce may supply. As little is it in your power to reduce that little force which is called your Army. Without looking abroad, there is one circumstance of a domestic nature deserving of attention. A considerable portion of the inhabitants of this country is of a particular species of the human race. Events have taken place, at no great distance, which awaken their curiosity and excite their sympathy. Recent information, from a neighboring State, exhibits symptoms of a disposition which may render the operation of military force indispensable. I will not dilate on this subject, it is better that gentlemen listen to the suggestions of their own minds than to arguments

which it may not be prudent to utter. One thing however I must mention: the supporters of the act before us, will be pleased to consider that to suppose the Army can be reduced, would be a reflection upon the present Administration. We know they claim the merit of great economy, and we must therefore presume that they have brought the Army down to the lowest possible standard. If anything more can be saved, why is not that saving now made? Since, then, there is no proposition to that effect, we are bound (out of respect to them) to believe that the idea is inadmissible.

But now, sir let us suppose that your revenue should be equal to this appropriation. What follows? It follows that the appropriation is unnecessary. You will observe, that even by this law, every surplus beyond the seven million is subject to the former appropriations. If, after providing for the current service, seven or seventeen million remain, laws long since enacted make that remainder part of the sinking fund. Every provision, therefore, is made already for redemption of the whole of the public debt—every useful provision. That which is now proposed is useless in so far as it can apply to the existing means of Government, and it is useless in that it can produce no single cent to fulfil the pretended intention. But while in this respect it is unnecessary and useless, it is in another respect pernicious. While the revenue is sufficient, it remains without effect; but it imposes upon the Government a necessity of taxing the people to the extent of any deficiency in the revenue, or else to violate the public faith, to be pledged by this appropriation. What then is the effect of this law? Either it is a miserable deception or else it is an appropriation at once useless and dangerous.

Mr. WRIGHT.—The Secretary of the Treasury has told us that this measure is proper. He, sir, has given us many reasons in the premises. We are told by the Secretary, bottoming himself, sir, upon a full view of all the finances of this country, that seven million three hundred thousand dollars may be appropriated. We must believe him. He is, the proper Executive officer. This is his measure. If this bill is rejected, where is the public faith which gentlemen say so much about? It is ruined. I believe there is a disposition to resist the Government; but we will support the operations of Government. We have confidence. Let gentlemen tell us how they made calculations of what sums were necessary. I am clear that this measure is right, and if it should become necessary to tax our citizens, they are honest enough to bear it. The gentleman from New York, says we shall drive them by the weight of taxes into Canada and Louisiana. If, sir, we have any citizens so base that they would, from that cause, or from any other cause, run away to Canada or to Louisiana, the sooner they go the better. I don't want any such citizens. I hope, sir, we shall pass this law, and not be terrified by the idea that we must lay new taxes.

On the question, Shall the bill pass? it was carried in the affirmative—yeas 17, nays 10, as follows:

SENATE.

Proceedings.

APRIL, 1802.

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

So it was *Resolved*, That this bill do pass with amendments.

MONDAY, April 26.

Mr. ELLERY, from the committee to whom was referred, on the 23d instant, the bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two, reported amendments, which were read.

Ordered, That they lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill making appropriations for the Military Establishment of the United States for the year one thousand eight hundred and two; a bill making appropriations for the support of Government for the year one thousand eight hundred and two; and a bill to repeal so much of the acts—the one, entitled “An act establishing a Mint, and regulating the coins of the United States;” the other an act, entitled “An act supplementary to the act establishing the Mint, and regulating the coins of the United States,” as relate to the establishment of the Mint; in which bills they desire the concurrence of the Senate. They insist on their amendments disagreed to by the Senate to the bill, entitled “An act further to alter and establish certain post roads;” and agree to the conference proposed by the Senate thereon, and have appointed managers on their part.

The three bills first mentioned in the message were read.

The Senate resumed the second reading of the bill to extend and continue in force the provisions of an act, entitled “An act giving a right of pre-emption to certain persons who have contracted with John C. Symmes or his associates, for lands lying between the Miami rivers in the Territory Northwest of the Ohio, and for other purposes.”

Ordered, That this bill pass to the third reading as amended.

The bill making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and two, was, by unanimous consent, read the second time, and referred to Messrs. BRADLEY, HOWARD, and DAYTON, to consider and report thereon.

The Senate took into consideration the amendments of the House of Representatives to the said bill, entitled “An act to amend the Judicial system of the United States.”

Resolved, That they do concur in all the amendments of the House of Representatives to the bill, except that which goes to strike out the fifteenth section, in which they do not concur.

The bill making appropriations for the support of Government for the year one thousand eight

hundred and two, was, by unanimous consent, read the second time, and referred to Messrs. BRADLEY, LOGAN, and WELLS, to consider and report thereon.

On motion, it was agreed, by unanimous consent, that the bill to repeal the acts establishing the Mint, and regulating the coins of the United States, be now read the second time.

On the question, Shall this bill pass to a third reading? it passed in the negative.

The bill, entitled “An act to regulate and fix the compensations of the officers of the Senate and House of Representatives,” was read the third time, and passed.

The bill, entitled “An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city,” was read the third time.

Resolved, That this bill do pass as amended.

The Senate resumed the third reading of the bill, entitled “An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the naval service of the United States.”

On motion to strike out the second section of the bill, to wit:

“SEC. 2. *And be it further enacted*, That if any commissioned or warrant officer of the Navy, or commissioned officer of Marines, have died, or shall hereafter die, by reason of wounds received while in the actual service of the United States, or have been lost at sea or drowned, or shall hereafter be lost at sea or drowned, while in service as aforesaid, and in the actual line of his duty, and shall leave a widow, or if not, leave a child or children, under age, such widow, or such child or children, as the case may be, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, and for and during the term of five years. And in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay for the residue of the term shall go to the child or children of such deceased officer while under the age of sixteen years; and, in like manner, the allowance to the child or children of such deceased, in case there be no widow, shall be paid no longer than during the time there is a child or children under the age of sixteen years.”

It passed in the affirmative—yeas 16, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Brown, Clinton, Cocke, Dayton, T. Foster, Franklin, Jackson, S. T. Mason, Ogden, Olcott, Stone, Sumter, and Wright.

NAYS—Messrs. Ellery, Dwight Foster, Howard, J. Mason, Morris, Nicholas, Wells, and White.

And having agreed to strike out the third section, and to amend the title by striking out the words “or may hereafter die,” it was

Resolved, That this bill pass as amended.

The bill, entitled “An act for the relief of Theodosius Fowler,” was read the third time; and on the question, Shall this bill pass? it was determined in the affirmative—yeas 14, nays 10, as follows:

APRIL, 1802.

Proceedings.

SENATE.

YEAS—Messrs. Anderson, Brown, Clinton, Dayton, Ellery, T. Foster, Franklin, Howard, J. Mason, Morris, Nicholas, Ogden, Wells, and White.

NAYS—Messrs. Baldwin, Bradley, Cocke, Jackson, Logan, S. T. Mason, Olcott, Stone, Sumter, and Wright.

Resolved, That this bill do pass.

The following Message was received from the
PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and

of the House of Representatives:

In pursuance of the act, entitled "An act supplemental to the act, entitled 'An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory,'" James Madison, Secretary of State, Albert Gallatin, Secretary of the Treasury, and Levi Lincoln, Attorney General of the United States, were appointed Commissioners, to settle, by compromise, with the Commissioners appointed by the State of Georgia, the claims and cession to which the said act has relation.

Articles of agreement and cession have accordingly been entered into and signed by the said Commissioners of the United States and of Georgia, which, as they leave a right to Congress to act upon them legislatively, at any time within six months after their date, I have thought it my duty immediately to communicate to the Legislature.

TH. JEFFERSON.

APRIL 26, 1802.

The Message and documents therein referred to were read, and ordered to be printed for the use of the Senate.

Mr. MORRIS, from the committee to whom was referred the Message of the President of the United States of the 29th of March last, on the police of the City of Washington, reported a bill on that subject, which was read, and, by unanimous consent, had a second reading.

On motion, it was

Resolved, That the motion made on the 16th instant for an amendment to the Constitution of the United States respecting the choice of Electors for President and Vice President be postponed until the next session of Congress.

TUESDAY, April 27.

The following Message was received from the
PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and

of the House of Representatives:

The Commissioners who were appointed to carry into execution the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, having differed in their construction of that article, and separated in consequence of that difference, the President of the United States took immediate measures for obtaining conventional explanations of that article, for the government of the Commissioners. Finding, however, great difficulties opposed to a settlement in that way, he authorized our Minister at the Court of London, to meet a proposition that the United States, by the payment of a fixed sum, should discharge themselves from their responsibility for such debts as cannot be recovered from the individual debtors. A convention has accordingly been sign-

ed, fixing the sum to be paid at 600,000 pounds sterling, in three equal and annual instalments; which has been ratified by me, with the advice and consent of the Senate.

I now transmit copies thereof to both Houses of Congress, trusting that, in the free exercise of the authority which the Constitution has given them on the subject of public expenditures, they will deem it for the public interest to appropriate the sums necessary for carrying this convention into execution.

TH. JEFFERSON.

APRIL 27, 1802.

The Message was read, and referred to Messrs. NICHOLAS, DAYTON, and LOGAN, to report thereon by bill or otherwise.

A message from the House of Representatives informed the Senate that they have passed a bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government.

On motion, section sixth, to strike out the following words, reported by the committee to be struck out, and which report was amended, as follows:

"*Provided*, That the convention of the said State shall, on its part, assent that each and every tract of land sold by Congress, from and after the 30th day of June next, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of five years from and after the day of sale."

It passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Bradley, Brown, Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

On motion, to strike out the words reported by the committee to be struck out of section sixth, and amended, as follows:

"*Third*. That one-twentieth part of the net proceeds of the lands lying within the said State, sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic to the Ohio, or to the navigable waters thereof, and continued through the said State: such roads to be laid out under the authority of Congress, with the consent of the several States through which the road shall pass."

It passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Bradley, Brown, Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

SENATE.

Proceedings.

APRIL, 1802.

On motion to strike out these words, reported by the committee to be struck out of the sixth section :

"*Second.* That the six miles reservation, including the salt springs, commonly called the Scioto Salt Springs, the salt springs near the Muskingum river, and in the military tract, with the sections of land which include the same, shall be granted to the said State, for the use of the people thereof, the same to be used under such terms, and conditions, and regulations, as the Legislature of the said State shall direct, provided the said Legislature shall never sell nor lease the same for a longer period than ten years."

It passed in the negative—yeas 8, nays 18, as follows :

YEAS—Messrs. Brown, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, and Tracy.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Dayton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, Wells, White, and Wright.

And the bill being further amended, it was ordered to the third reading as amended.

The bill respecting the lands of the United States in the Northwestern Territory was read the third time.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to extend and continue in force the provisions of an act, entitled 'An act to give a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes."

The bill sent from the House of Representatives, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read, and ordered to the second reading.

The Senate resumed the second reading of the bill, entitled "An act to provide for the establishment of certain districts, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage,' and for other purposes."

And, after debate, *Ordered*, That it be recommended to the original committee, further to report thereon.

WEDNESDAY, April 28.

Mr. BRADLEY, from the committee to whom was referred, on the 26th instant, the bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two, reported it without amendment.

The Senate resumed the third reading of the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins and for other purposes.'"

Resolved, That this bill pass with amendment.

Mr. TRACY notified the Senate that he should, to-morrow, ask leave to bring in a bill to carry into effect the resolution of Congress, passed on the 17th day of June, 1777, for erecting a monument to the memory of General Wooster.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes;" which report was in part adopted.

Ordered, That the bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that they have passed a bill to revive and continue in force an act, entitled "An act for establishing trading houses with the Indian tribes;" in which they desire the concurrence of the Senate.

The bill, entitled "An act to revive and continue in force an act, entitled 'An act for establishing trading houses with the Indian tribes,'" was read, and, by unanimous consent, had a second reading.

Ordered, That the further consideration thereof be postponed.

Mr. BROWN, from the committee to whom was referred, on the 17th instant, the petition of the traders, pilots, builders, and others concerned in navigation, in the district of St. Mary's river, reported that the petitioners have leave to withdraw their petition; and the report was adopted.

Mr. BROWN, from the said committee, to whom was also referred the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," reported it without amendment.

The bill, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," was read the third time.

On motion to strike out, section 6th, line 18th, after the word "sell," the words "nor lease the same for a longer period than ten years," and insert "the same, nor derive a revenue from the same:"

It passed in the negative—yeas 6, nays 14, as follows:

YEAS—Messrs. Dwight Foster, Morris, Nicholas, Ogden, Olcott, and Tracy.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Stone, Sumter, and Wright.

Same section, line 29th, on motion to strike out the word "sold," and insert the word "granted"—it passed in the negative—yeas 8, nays 14, as follows:

YEAS—Messrs. Bradley, Dwight Foster, Howard, Morris, Ogden, Olcott, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

And the bill being further amended, on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 16, nays 6, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Ellery, T. Foster, Franklin,

APRIL, 1802.

Proceedings.

SENATE.

Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

YAYS—Messrs. Dwight Foster, Howard, Morris, Ogden, Olcott, and Tracy.

So it was *Resolved*, That this bill do pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia;'" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

THURSDAY, April 29.

Agreeably to notice given yesterday, Mr. TRACY had leave to bring in a bill to carry into effect the resolution of Congress, passed on the 17th day of June, 1777, for erecting a monument to the memory of General Wooster; which was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. TRACY, JACKSON, and NICHOLAS, to consider and report thereon.

Mr. BRADLEY, from the committee to whom was referred, on the 26th instant, the bill making appropriations for the support of Government for the year one thousand eight hundred and two, reported amendments; which were read and adopted.

Ordered, That this bill pass to the third reading as amended.

The bill additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia," was read the second time, and referred to Messrs. S. T. MASON, HOWARD, and STONE, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee to the bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two; which were agreed to.

On motion further to amend the bill, by adding a new section, as follows:

"Sec. 3. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to dismiss so many of the officers of the Marine Corps as will reduce their number and grades in legal proportion to the number of marines retained in service, and that the officers who may be so deranged shall be entitled to receive — months' pay."

It passed in the affirmative—yeas 15, nays 6, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Stone, Sumter and Wright.

NAYS—Messrs. Dwight Foster, Howard, Ogden, Olcott, Tracy, and Wells.

Ordered, That this bill pass to the third reading as amended.

The bill making appropriations for the Military Establishment of the United States in the year 1802, was read the second time.

Ordered, That this bill pass to a third reading.

The bill, entitled "An act to amend an act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," was read the third time.

Resolved, That this bill pass as amended.

Mr. OGDEN, from the committee to whom was referred, on the 23d instant, the petition of John Cleves Symmes, made report; which was read, and ordered to lie for consideration.

The bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, was read the second time, and referred to Messrs. S. T. MASON, WRIGHT, and HOWARD, to consider and report thereon.

The Senate resumed the second reading of the bill respecting the police of the District of Columbia.

Ordered, That the further consideration thereof be postponed.

The Senate resumed the second reading of the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes."

Ordered, That it pass to a third reading.

The Senate resumed the second reading of the bill, entitled "An act to revive and continue in force an act for establishing trading houses with the Indian tribes."

On motion, it was agreed, by unanimous consent, that the bill be now read the third time.

Resolved, That this bill do pass.

Ordered, That the committee to whom was referred, on the 9th of March last, the petition of Albert Russel, and others, be discharged; and that the petitioners have leave to withdraw their petition.

Ordered, That the committee appointed on the 15th February last, on that part of the Message of the President of the United States which refers to the report of the Secretary of War, on the subject of the islands in the lakes and rivers of our northern boundary, and of certain lands in the neighborhood of our military posts, and to whom also was referred the letter of Governor Harrison, be discharged.

Ordered, That the committee appointed the 11th of March last, on the bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee; also, the committee, appointed the 22d of March last, on the bill to alter the time of holding the district court in the district of Maine, be respectively discharged.

Ordered, That Mr. SUMTER be on the committee to whom was referred the bill for the relief of Fulwar Skipwith, in place of Mr. DAYTON, absent.

Ordered, That the Message of the President of the United States of the 26th instant, relative to articles of agreement and cession with the State of Georgia, be referred to Messrs. TRACY, S. T. MASON, and BRECKENRIDGE, to consider and report thereon.

Mr. S. T. MASON presented the petition of Da-

vid Brown, of Massachusetts, praying compensation for his sufferings while imprisoned under sentence of the judicial court, for seditious practices; and the petition was read, and ordered to lie on the table.

FRIDAY, April 30.

Mr. TRACY, from the committee to whom was referred, on the 29th instant, the bill, to carry into effect a resolution of Congress for erecting a monument to the memory of the late General David Wooster, reported amendments; which were read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill respecting the police of the District of Columbia.

Ordered, That the further consideration thereof be postponed until to-morrow.

Mr. MASON presented sundry petitions of the inhabitants of Georgetown, on the Potomac, praying to be authorized by law to assess and collect the necessary taxes for the paving and improvement of that town.

Ordered, That these petitions be referred to the committee who have under consideration the bill, entitled "An act to incorporate the inhabitants of the City of Washington."

The Senate resumed the consideration of the report of the committee on the petition of John Cleves Symmes, which was adopted, as follows:

1. That, in the year 1788, the petitioner entered into a contract with the United States, upon a fair consideration, for the purchase of one million of acres of land, in the Northwestern Territory.
2. That, in consequence of such contract, the petitioner made a settlement upon the tract, and sold many parcels thereof to adventurers, who went together with him, into that new country, and located themselves there.
3. That, in the year 1794, the petitioner obtained a patent, under the authority of a law which enabled the President of the United States to make the same, for such proportion of the one million of acres, which had at that time been paid for, pursuant to the said contract, amounting to 311,682 acres of the said million of acres of land.
4. That the petitioner, after the said in part fulfilment of the contract on the side of both the parties to the same, proceeded to make sales (as he before had done in respect to the lands for which he had lately received the patent, as above mentioned) in the residue of the one million of acres, expecting to make the title when he should receive his patent thereof, agreeably to his contract, as he had before practised.
5. That no authority has been given by law, or otherwise, that can be found by your committee, whereby the said contract can be carried into execution on behalf of the United States, upon the payment of the sums further stipulated to be paid by the petitioner, agreeably to his contract, whereby he is entitled to a patent, upon payment of such stipulated sums; which payments the petitioner avers he always has been, and still is, ready to pay and perform, as thereunto required by his contract.
6. That your committee, from the papers and documents laid before them by the petitioner, or from the statement which he has made, do not perceive that the

petitioner has done any one act, or omitted to do any act, whereby he has forfeited any right to the full benefit of his contract, before stated.

7. That no authority exists, by law, enabling any person to carry into execution the said contract on behalf of the United States; but, on the contrary, that two laws have been passed predicated upon the idea that the obligations of the United States, under the said contract, have ceased and determined; under the operation of which laws the said petitioner states, and your committee believe, that the said petitioner is suffering very great hardships, tending to the utter destruction and total waste of his whole property.

8. Your committee, the premises considered, beg leave to recommend the adoption of the resolution accompanying this report:

Resolved, That the President of the United States be requested to direct the Attorney General to examine into the contract entered into between the United States and John Cleves Symmes, Esq. and others, bearing date on the 15th of October, 1788, and all the contracts and laws relative thereto; and all the transactions which may legally or equitably affect the same, as far as they may come to his knowledge; and to make a report of the same to the Senate, at their next session, together with his opinion whether the said John Cleves Symmes has any claim, and what, upon the United States, in virtue of the said contract, or any other contract, or law predicated upon the same: and that the further consideration of the petition of said John Cleves Symmes, Esq. of and concerning the premises, be postponed to the first day of the next session of Congress.

And the report was adopted.

Ordered, That the Secretary lay this resolution before the President of the United States.

A message from the House of Representatives informed the Senate that the House have passed a bill making an appropriation to carry into execution the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, in which they desire the concurrence of the Senate.

They agree to the amendments of the Senate to the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city," with amendments; in which they desire the concurrence of the Senate. They have passed a resolution authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on Saturday the 1st of May, in which they desire the concurrence of the Senate.

The Senate resumed the consideration of the amendments of the House of Representatives to the amendments on the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city," and agreed thereto.

The bill, entitled "An act making an appropriation for carrying into effect the convention between the United States of America and His Britannic Majesty," was read and ordered to the second reading.

The resolution of the House of Representatives,

MAY, 1802.

Proceedings.

SENATE.

authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on Saturday the first day of May, was read,

The bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and two," was read a third time and passed.

The bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and two," was read the third time.

Resolved, That this bill do pass as amended.

The bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, was read the third time as amended.

On motion to strike out the third section, agreed to yesterday, it passed in the affirmative—yeas 12, nays 11, as follows:

YEAS—Messrs. Bradley, Brown, Dwight Foster, Howard, Morris, Nicholas, Ogden, Olcott, Tracy, Wells, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Cocke, Ellery, Franklin, Logan, S. T. Mason, Stone, and Sumter.

Resolved, That this bill do pass with the amendments.

The bill, entitled "An act to provide for the establishment of certain districts, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage, and for other purposes,'" was read the third time, and passed with an amendment.

Mr. BRADLEY, from the committee to whom was referred, on the 6th and 7th instant, the petition of Elijah Brainard, also, the petition of Jonathan Snowden, reported that the consideration of said petitions be severally postponed to the next session of Congress, and that the committee to whom the same were referred be discharged, and the report was adopted.

Mr. S. T. MASON, from the committee to whom was referred, on the 29th instant, the bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, reported amendments; which were read, and ordered to lie for consideration.

On motion, it was

Ordered, That the bill for the better security of public money and property in the hands of public officers and agents, as amended by the House of Representatives, be postponed to the next session of Congress.

Mr. S. T. MASON, from the committee to whom was referred, on the 29th instant, the bill additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia;" reported amendments, which were read, and ordered to lie for consideration.

SATURDAY, MAY 1.

Mr. TRACY, from the committee to whom was referred, on the 29th April last, the Message from the President of the United States of the 26th, accom-

panying certain articles of agreement and cession which have been entered into and signed by the Commissioners of the United States and the Commissioners of the State of Georgia, made report—

"That at this very late hour of the session, and from a total want of all information and facts which would be necessary to enable the committee to form a just opinion on the subject of the said agreement, the committee have it not in their power to recommend any measure as necessary to be adopted on the subject."

The Senate took into consideration the resolution of the House of Representatives authorizing the President of the Senate and Speaker of the House of Representatives to adjourn their respective Houses on the first day of May, and agreed to amend the same, by striking out the word "first," and inserting the word "third."

The Senate took into consideration the amendments reported by the committee to the bill, to amend an act, entitled "An act for the relief of sick and disabled seamen, and for other purposes;" and, having agreed thereto, the bill was ordered to the third reading as amended.

Mr. JACKSON, from the managers at the conference on the part of the Senate, reported that the Senate recede from some, and adhere to other, amendments to the bill further to alter and establish certain post roads; and the report was adopted.

The bill making an appropriation for carrying into effect the convention between the United States of America and His Britannic Majesty, was read the second time.

Ordered, That it pass to a third reading.

The Senate took into consideration the amendments of the committee to the bill, additional to, and amendatory of "An act concerning the District of Columbia," and, having agreed thereto, the bill was ordered to the third reading as amended.

Mr. MORRIS from the committee to whom was referred, on the 23d of April last, the bill for the relief of Fulwar Skipwith, reported it without amendment.

Ordered, That it pass to a third reading.

On motion by Mr. OGDEN, that it be

Resolved, That a committee be appointed to bring in a bill for the repealing so much of any former law, as authorizes a certain provisory agreement, lately made and entered into by Commissioners on the part of the United States, and Commissioners on the part of the State of Georgia, bearing date on the 24th of April, 1802, and by which the same may be binding and conclusive on the United States:

It passed in the negative—yeas 11, nays 12, as follows:

YEAS—Messrs. T. Foster, Dwight Foster, Franklin, Howard, Morris, Ogden, Olcott, Tracy, Wells, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Ellery, Jackson, Logan, S. T. Mason, Nicholas, Stone, and Sumter.

On motion it was

Resolved, That the committee on the Message from the President of the United States, of the 27th instant, on the subject of the British convention, be discharged.

SENATE.

Proceedings.

MAY, 1802.

MONDAY, May 3.

A message from the House of Representatives informed the Senate that the House agree to the report of the committee of conference on the bill, entitled "An act further to alter and establish certain post roads." They have passed a resolution to amend the Constitution of the United States; in which they desire the concurrence of the Senate.

The resolution was read as follows :

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes as part of the said Constitution, to wit :

"That in all future elections of President and Vice President the persons voted for shall be particularly designated, by declaring which is voted for as President and which as Vice President."

Ordered, That it lie for consideration.

The bill, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read the third time, and further amended.

On the question, shall this bill pass as amended ? it was determined in the affirmative—yeas 15, nays 5, as follows :

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, Dwight Foster, Franklin, Logan, S. T. Mason, Nicholas, Olcott, Stone, and Sumter.

NAYS—Messrs. Howard, Morris, Ogden, Tracy, and Wells

Resolved, That this bill do pass with amendments.

The bill entitled "An act to amend an act, entitled 'An act for the relief of sick and disabled seamen, and for other purposes,'" was read the third time.

On the question, Shall this bill pass as amended ? it was determined in the affirmative—yeas 15, nays 5, as follows :

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, Franklin, Logan, S. T. Mason, Morris, Nicholas, Olcott, Stone, and Sumter.

NAYS—Messrs. Dwight Foster, Howard, Ogden, Tracy, and Wells.

Resolved, That this bill do pass with amendments.

The bill entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia,'" was read the third time; and being further amended,

Resolved, That this bill do pass as amended.

The bill entitled "An act making appropriation for carrying into effect the convention between the United States of America and his Britannic Majesty," was read the third time and passed.

A message from the House of Representatives informed the Senate that the House concur in the amendment of the Senate to the bill, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Colum-

bia," with an amendment; in which they desire the concurrence of the Senate.

The Senate took into consideration the amendment of the House of Representatives to their amendment to the bill last mentioned.

Resolved, That they do concur therein.

The Senate resumed the second reading of the bill respecting the police of the District of Columbia; and, on motion, the further consideration thereof was postponed until the third Monday in November next.

The bill, entitled "An act for the relief of Fulwar Skipwith," was read the third time and passed.

The Senate took into consideration the resolution of the House of Representatives of the 1st of May, for an amendment to the Constitution of the United States.

And, on the question, Will the Senate concur therein ? it passed in the negative—yeas 15, nays 8, as follows :

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Sumter, and Wright.

NAYS—Messrs. Dwight Foster, Howard, Morris, Olcott, Ogden, Stone, Tracy, and Wells.

So the question was lost, two-thirds of the Senators present not concurring therein.

On motion that the petition of David Brown be postponed until the next session of Congress, it passed in the affirmative.

On motion that it be

"Resolved, That the President of the United States be requested to cause to be laid before this House, at the next meeting of Congress, authenticated copies of the proceedings in the Courts of the United States, in all cases in which fines and imprisonments have been inflicted upon the individuals under the act commonly called the Sedition act; and, also, in all cases, if any such there be, in which fine and imprisonment have been inflicted upon individuals in the said courts, under the common law of England:"

It passed in the negative.

Mr. TRACY presented the memorial of David Austin, "praying Legislative attention to the order of Providence in the affairs of the nation;" and the memorial was read.

On motion the Senate adjourned to half past seven o'clock this evening.

MONDAY EVENING, 7½ o'clock.

A message from the House of Representatives informed the Senate that the House have appointed a committee on their part, with such as the Senate may appoint, to wait on the President of the United States, and notify him that, unless he hath any further communications to make to the two Houses of Congress, they are ready to adjourn, and they desire the appointment of a committee on the part of the Senate.

The Senate took into consideration the resolution of the House of Representatives appointing a committee, jointly, with such as the Senate may appoint, to wait on the President of the United States and notify him of the proposed adjournment of the two Houses of Congress; and

MAY, 1802.

Adjournment.

SENATE.

Resolved, That they do concur therein, and that Messrs. ELLERY and CLINTON be the committee on the part of the Senate.

Mr. ELLERY, from the joint committee, reported that they had waited on the President of the United States, agreeably to the vote of the two Houses, and that he informed them he had no further business to communicate.

Ordered, That the Secretary notify to the

House of Representatives that the Senate, having completed the business of the session, are ready to adjourn.

A message from the House of Representatives informed the Senate that the House of Representatives, having completed the business before them, are about to adjourn.

Whereupon, the Senate adjourned to the first Monday in December next.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE FIRST SESSION OF THE SEVENTH CONGRESS, BEGUN AT THE CITY OF
WASHINGTON, MONDAY, DECEMBER 7, 1801.

MONDAY, December 7, 1801.

This being the day appointed by the Constitution for the annual meeting of Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats in the House, to wit:

From New Hampshire—Abiel Foster, George P. Upham, and Samuel Tenney.

From Massachusetts—William Eustis, John Bacon, Phaniel Bishop, Joseph B. Varnum, Richard Cutts, Lemuel Williams, William Shepard, Ebenezer Mattoon, Nathan Reed, Josiah Smith, and Manasseh Cutler.

From Rhode Island—Thomas Tillinghast, and Joseph Stanton, jr.

From Connecticut—Roger Griswold, Samuel W. Dana, John Davenport, Calvin Goddard, Benjamin Tallmadge, Elias Perkins, and John C. Smith.

From Vermont—Israel Smith.

From New York—Samuel L. Mitchill, Philip Van Cortlandt, Theodorus Bailey, John Smith, Benjamin Walker, Thomas Morris, Killian K. Van Rensselaer, Lucas Elmendorf, David Thomas, and John P. Van Ness.

From New Jersey—John Condit, James Mott, William Helms, Henry Southard, and Ebenezer Elmer.

From Pennsylvania—William Jones, Michael Leib, John Smilie, William Hoge, Isaac Vanhorne, Joseph Heister, Robert Brown, Henry Woods, John A. Hanna, John Stewart, Thomas Boude, and Joseph Hemphill.

From Delaware—James A. Bayard.

From Maryland—John Archer, Joseph H. Nicholson, Samuel Smith, Richard Sprigg, John Dennis, and Thomas Plater.

From Virginia—Thomas Newton, jr., John Randolph, jr., George Jackson, Philip R. Thompson, John Taliaferro, John Stratton, William B. Giles, Abram Trigg, John Trigg, Anthony New, John Smith, David Holmes, Richard Brent, Edwin Gray, and Matthew Clay.

From Kentucky—Thomas T. Davis, and John Fowler.

From North Carolina—Nathaniel Macon, Willis Alston, Richard Stanford, Charles Johnson, Archibald Henderson, and John Stanley.

From Tennessee—William Dickson.

From South Carolina—Thomas Sumter, Thomas Moore, and Thomas Lowndes.

From Georgia—John Milledge.

From the Northwest Territory—Paul Fearing.

From Mississippi Territory—Narsworthy Hunter.

A quorum, consisting of a majority being pres-

ent, the House proceeded, by ballot, to the choice of a Speaker; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of NATHANIEL MACON, one of the Representatives for the State of North Carolina: Whereupon, Mr. MACON was conducted to the Chair, and he made his acknowledgments to the House, as follows:

"GENTLEMEN: Accept my sincere thanks for the honor you have conferred on me, in the choice just made. The duties of the Chair will be undertaken with great diffidence indeed; but it shall be my constant endeavor to discharge them with fidelity and impartiality."

The House proceeded, in the same manner, to the appointment of a Clerk; and, upon examining the ballots, a majority of the Whole House was found in favor of JOHN BECKLEY.

The oath to support the Constitution of the United States, as prescribed by law, was then administered by Mr. GRISWOLD, one of the Representatives for the State of Connecticut, to the SPEAKER; and then the same oath, or affirmation, was administered, by Mr. SPEAKER, to each of the members present.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business; and that, in the absence of the Vice President, they have elected the honorable ABRAHAM BALDWIN, President of the Senate, *pro tempore*.

Ordered, That a message be sent to the Senate to inform them that a quorum of this House is assembled, and have elected NATHANIEL MACON, one of the Representatives of the State of North Carolina, their Speaker, and are now ready to proceed to business; and that the Clerk of this House do go with the said message.

The House proceeded, by ballot, to the choice of a Sergeant-at-Arms, Doorkeeper, and Assistant Doorkeeper; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of JOSEPH WHEATON, as Sergeant-at-Arms, and, also, an unanimous vote in favor of THOMAS CLAXTON and THOMAS DUNN, severally, the former as Doorkeeper, and the latter as Assistant Doorkeeper.

A message from the Senate informed the House that the Senate have appointed a com-

H. OF R.

Proceedings.

DECEMBER, 1801.

mittee on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may think proper to make to them.

The House proceeded to consider the said message of the Senate, and concurred therein.

Ordered, That Mr. SAMUEL SMITH, Mr. GRISWOLD, and Mr. DAVIS, be appointed a committee on the part of this House, for the purpose expressed in the message of the Senate.

On motion, it was

Resolved, That the rules and orders of proceeding established by the late House of Representatives, shall be deemed and taken to be the rules and orders of proceeding to be observed in this House, until a revision or alteration of the same shall take place.

Ordered, That a committee be appointed to prepare and report standing rules and orders of proceeding to be observed in this House; and that Mr. VARNUM, Mr. GILES, Mr. LEIB, Mr. DAVENPORT, and Mr. HENDERSON, be the said committee.

Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members, respectively, shall choose, to be delivered at their lodgings.

Mr. SAMUEL SMITH, from the joint committee appointed to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled and ready to receive any communication he may think proper to make to them, reported that the committee had performed that service, and that the President signified to them that he would make a communication to this House, to-morrow, by message.

A message from the Senate informed the House that the Senate have agreed to a resolution appointing a committee, on their part, jointly with such committee as may be appointed on the part of this House, to take into consideration a statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same; to which they desire the concurrence of this House.

The House proceeded to consider the said resolution: Whereupon,

Ordered, That Mr. NICHOLSON, Mr. BAYARD, and Mr. RANDOLPH, be appointed a committee on the part of this House, pursuant thereto.

Resolved, That, unless otherwise ordered, the daily hour to which the House shall stand adjourned, during the present session, be eleven o'clock in the forenoon.

TUESDAY, December 8.

Several other members, to wit: from Pennsylvania ANDREW GREGG; from Virginia, SAMUEL J. CABELL; from North Carolina, JAMES HOLLAND; and from South Carolina WILLIAM BUTLER; appeared, produced their credentials, and took their seats in the House; the oath to support the Con-

stitution of the United States being first administered to them by Mr. SPEAKER, according to law.

A petition of John McDonald, late of the city of Philadelphia, was presented to the House and read, praying that he may be employed to superintend the arrangement and safe-keeping of the books intended for the library of the two Houses of Congress; and that he may receive such compensation for his services, in that capacity, as to the wisdom of Congress shall seem meet.

Ordered, That the said petition be referred to the committee appointed yesterday, on the part of this House, jointly with the committee appointed by the Senate, to take into consideration a statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same.

The following Committees were appointed pursuant to the standing rules and orders of the House, viz:

Committee of Elections—Mr. MILLEDGE, Mr. TENNEY, Mr. CONDIT, Mr. DENNIS, Mr. HANNA, Mr. STANLEY, and Mr. JOHN TALIAFERRO.

Committee of Revisal and Unfinished Business. Mr. DAVENPORT, Mr. CLAY, and Mr. ALSTON.

Committee of Claims—JOHN COTTON SMITH, Mr. GREGG, Mr. HOLMES, Mr. MATTOON, Mr. JOHN SMITH, of New York, Mr. PLATER, and Mr. MOORE.

Committee of Commerce and Manufactures—Mr. SAMUEL SMITH, Mr. EUSTIS, Mr. DANA, Mr. MITCHILL, Mr. JONES, Mr. NEWTON, and Mr. LOWNDES.

Resolved, That a standing Committee of Ways and Means be appointed, whose duty it shall be to take into consideration all such reports of the Treasury Department, and all such propositions, relative to the revenue, as may be referred to them by the House; to inquire into the state of the public debt, of the revenue, and of the expenditures; and to report, from time to time, their opinion thereon.

Ordered, That Mr. RANDOLPH, Mr. GRISWOLD, Mr. ISRAEL SMITH, Mr. BAYARD, Mr. SMILIE, Mr. READ, Mr. NICHOLSON, Mr. VAN RENSSELAER, and Mr. DICKSON, be appointed a committee, pursuant to the said resolution.

Resolved, That Mr. CUTTS and Mr. ABRAM TRIGG be appointed a Committee for Enrolled Bills, on the part of this House, jointly, with such committee as shall be appointed for that purpose on the part of the Senate.

A message from the Senate informed the House that the Senate have agreed to a resolution that two Chaplains, of different denominations, be appointed to Congress, one by each House, to interchange weekly; to which they desire the concurrence of this House: Whereupon,

Resolved, That this House doth concur with the Senate in the said resolution.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia;

DECEMBER, 1801.

Accounts of T. Pickering.

H. OF R.

and that they be authorized to report by bill or otherwise.

Ordered, That Mr. SPRIGG, Mr. BRENT, Mr. FOSTER, Mr. SUMTER, Mr. PLATER, Mr. STRATTON, and Mr. BACON, be appointed a committee, pursuant to the said resolution.

Ordered, That the credentials of NARSWORTHY HUNTER, who has appeared as a Delegate from the Territory of the United States known by the name of the Mississippi Territory, be referred to the Committee of Elections; and that they be directed to report whether the Territory is entitled to elect a Delegate, who may have a seat in this House.

The SPEAKER laid before the House a letter from THOMAS CLAXTON, the Doorkeeper, stating that, in the execution of the various duties attached to his station, certain expenditures will be requisite, and further assistance necessary to be allowed by the House; which was read, and referred to Mr. ELMENDORF, Mr. GRAY, and Mr. BACON.

A petition of James McCashen, and others, was presented to the House and read, stating that they are subjected to great and heavy losses and distresses by the operation of an act, passed at the last session of Congress, giving to persons claiming, by purchase from John Symmes and his associates, a right of pre-emption in certain lands purchased of the United States, to the prejudice of your petitioners' claims as original purchasers under said Symmes, and praying for relief.—Referred to Mr. DAVIS, Mr. HOGE, and Mr. FEARING; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. Lewis, his Secretary, as follows:

MR. SPEAKER: I am directed by the President of the United States to hand you a Letter, accompanying a Communication, in writing, from the President to the two Houses of Congress.

The said Letter and Communication were read. [*Vide* Senate Proceedings of this date, *ante*, page 11.]

Ordered, That the said Letter and Communication be committed to the Committee of the Whole House on the state of the Union.

ACCOUNTS OF T. PICKERING.

Mr. NICHOLSON moved that the House do come to the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House an account of all moneys received by Timothy Pickering, Esq., former Secretary of State, together with Mr. Pickering's account of disbursements, and his vouchers for the same.

Mr. NICHOLSON observed, that he conceived this measure necessary on account of the clamor that had been raised, the publications of various newspapers, and the agitation of the public. He considered it a duty due to his constituents to give them complete satisfaction on this subject. Mr. N. was one of the committee appointed to ex-

amine the accounts of the Treasurer the last session. He did not think that committee authorized to attend to any other than the Treasurer's accounts, and the mode of keeping them. He hoped, for the reasons before mentioned, and for the entire satisfaction of all, that the resolution would be adopted.

Mr. GRISWOLD rose.—He observed that he also was a member of that committee; that he differed much from the gentleman last up, relative to the powers of that committee. He believed that committee were authorized to examine all the accounts of the Treasury; that Mr. Pickering's accounts were examined, and that the vouchers were also examined, a certain bundle of papers excepted, which the committee were informed were vouchers on a particular account, but which the committee thought it too tedious to critically investigate as they were knowing to the appropriations. Mr. G. thought the argument of present alarm or public agitation futile, as that clamor had existed previous to the investigation of the committee a year since; that it was needless to investigate those accounts again and again; it would employ their whole time. But he wished particularly to know the gentleman's object; something appeared to be in view which he could not understand; he wished the gentleman fully to explain himself. Mr. G. conceived that it did not come within the precinct of the duties of the House to settle the accounts of Mr. Pickering; that House was not a board for that purpose. Mr. G. had no objection, other than on the grounds of inconsistency, to the resolution.

Mr. NICHOLSON said, the gentleman and himself differed as to the power of the committee that had attended to the investigation of the Treasury accounts; he believed they were not authorized to enter into an inquiry whether all the moneys received by Mr. Pickering were properly appropriated; this was his object. He had been informed, of late, that Mr. Pickering had, in some instances, appropriated more money than he was allowed, and had sometimes appropriated money to purposes, though public purposes, otherwise than ordered; it was his wish that the House should adopt some regulations in these matters, not having appropriations discretionary with officers, and the better to enable the Comptroller to settle his accounts. He was sensible of the impossibility of their making a thorough investigation, and that they must trust to the Treasury for information; but that when the attention of the people was called to particular characters in this manner, it was their duty to satisfy them; he did not wish to single out Mr. Pickering alone; he wished equal reference to others. The proposed resolution was not on account of any doubts in his mind; he did not entertain the least suspicion that Mr. Pickering had ever appropriated to his own use, or defrauded the public of a single dollar; he believed him to be a man of irreproachable honesty and integrity; but the report of the former committee did not say enough.

Mr. GRISWOLD.—He presumed it very probable that there had been occasionally excess of appro-

H. OF R.

Proceedings.

DECEMBER, 1801.

priations; every man acquainted with public business knew that the public service would have suffered had not this been the case. Most members knew how often this had happened, and how often Congress had justified, and granted afterwards, this excess of appropriations; laws cannot always touch contingencies. It had often been the case in the office of the Secretary at War; Congress afterwards made up the expenditure, the excess appearing fairly and necessarily applied; so it may have been in the office of the Secretary of State.

The resolution was postponed till Monday next, and then the House adjourned.

WEDNESDAY, December 9.

Another member, to wit: JOHN CAMPBELL, from Maryland, appeared, produced his credentials, was qualified, and took his seat in the House.

A petition of Henry Mumbower and others was presented to the House and read, praying a reimbursement of the fines and penalties incurred by the petitioners, for a supposed attempt to impede the execution of the law laying a tax on lands and dwelling houses within the United States, and for which they were convicted and sentenced by the circuit court of the United States for the district of Pennsylvania.—Referred to Mr. LEIB, Mr. CAMPBELL, and Mr. JOHNSON, to examine and report the same, with their opinion thereupon to the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting an account of the receipts and expenditures of the United States for the year 1800, together with a letter from the Register of the Treasury, in relation thereto; which were read, and ordered to be referred to the Committee of Ways and Means.

THURSDAY, December 10.

Mr. MITCHILL presented a petition of certain aliens residing in New York and its vicinity, stating the injuries they suffer from the naturalization law, and praying the House to afford such relief as they shall deem fit.

After some conversation as to the disposition of the petition, it was agreed that it lie on the table, until that part of the President's Message on the same subject be taken up by the House.

A petition to the same effect was presented by Mr. MITCHILL from certain alien residents in the county of Montgomery, State of New York.

Mr. GILES moved the reference of this petition to the Committee of the Whole, to whom had been referred the President's Message.

Mr. G. and Mr. MITCHILL considered this mode of disposition proper to be pursued in all cases where abstract principles were to be settled. Such was the present case. The facts were notorious and indisputable.

Mr. GRISWOLD advocated the reference of all petitions to a select committee. In considering them, facts might arise, which could only be elucidated by a select committee.

Mr. GILES's motion was carried.

A petition of Sarah Fletcher and Jane Ingraham, widows and relicts of Patrick Fletcher, late commander of the United States' frigate *Insurgent*, and of Joseph Ingraham, late a lieutenant on board the United States' brigantine of war *Pickering*, was presented to the House and read, praying that the petitioners may receive, for and during their respective lives, an annuity equivalent to the half pay of their husbands, respectively, in consideration of their loss, in the capacities aforesaid, with their vessels and crews, whilst in the public service of the United States, some time in the year 1800.—Referred to Mr. EUSTIS, Mr. GODDARD, Mr. NICHOLSON, Mr. GILES, and Mr. STANTON; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. ELMENDORF, from the committee to whom was referred, on the eighth instant, a letter from THOMAS CLAXTON, the Doorkeeper of this House, relative to certain expenditures, and further assistance necessary to be allowed for enabling him to execute the duties of his station, made a report; which was read and considered: Whereupon,

Resolved, That THOMAS CLAXTON be, and is hereby, authorized to employ, under his immediate direction, one additional assistant, two servants, and two horses, for the purpose of performing such services and duties as are usually required by the House of Representatives, during the present session, and for four days thereafter; and the sum of five dollars and seventy-five cents per day be allowed to him for that purpose; and that he be paid therefor out of the fund appropriated for the contingent expenses of the House.

A message from the Senate informed the House that the Senate have proceeded to the appointment of a Chaplain to Congress, on their part, and the Rev. Mr. GANTT has been duly elected.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have power to report by bill or otherwise.

Ordered, That Mr. SOUTHARD, Mr. ARCHER, Mr. NEW, Mr. BOUDE, Mr. BUTLER, Mr. WALKER, and Mr. LEMUEL WILLIAMS, be appointed a committee, pursuant to the said resolution.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, the majority of the votes of the whole House was found in favor of the Reverend WILLIAM PARKINSON.

FRIDAY, December 11.

Several other members, to wit: from New Hampshire, JOSEPH PEIRCE; from Massachusetts, PELEG WADSWORTH; from Virginia, THOMAS CLAIBORNE and JOHN CLOPTON; and, from North Carolina, WILLIAM H. HILL, appeared, produced their credentials, were qualified, and took their seats in the House.

DECEMBER, 1801.

Revenue Laws.

H. or R.

Mr. MILLEDGE, from the Committee of Elections, reported that the committee had, in part, examined the certificates and other credentials of the members returned to serve in this House, and had agreed upon a report; which was read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from Samuel Meredith, late Treasurer of the United States, accompanying his general accounts of the receipts and expenditures of public moneys, from the first of October, one thousand eight hundred, to the thirtieth of June, one thousand eight hundred and one, inclusive; also, his accounts of receipts and expenditures for the Navy and War Departments, commencing the first day of October, one thousand eight hundred, and ending the thirtieth of September, one thousand eight hundred and one; which was read, and referred to the Committee of Ways and Means.

Mr. NICHOLSON observed that, during the last session a committee had been appointed to inquire into the expediency of amending an act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" but, from the lateness of the period when the committee was appointed, and from the pressure of other business, the subjects, though important, had been neglected. He, therefore, now moved the appointment of a committee for the same purpose.

The motion was agreed to, as follows:

Resolved, That a committee be appointed to inquire into the expediency of amending the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and that the said committee be authorized to report by bill, or otherwise.

Ordered, That Mr. NICHOLSON, Mr. GODDARD, Mr. HOLLAND, Mr. JOHN SMITH, of Virginia, and Mr. LOWNDES, be appointed a committee pursuant to the said resolution.

REVENUE LAWS.

Mr. S. SMITH, after a few introductory observations, moved that the Committee of Commerce and Manufactures be directed to inquire whether any, and what alterations may be necessary in the acts laying duties on goods, wares, and merchandise, imported into the United States.

Mr. GRISWOLD thought that the subject, belonging to the revenue, properly attached itself to the Committee of Ways and Means. He contended that any alteration whatever would either increase or diminish the revenue, and therefore belonged to the financial system, which the Committee of Ways and Means especially had in charge; on that account he moved its reference to that committee.

Mr. SMITH contended that it was usual and necessary for the subject to be discussed by commercial men, of whom alone the Committee of Commerce and Manufactures was composed. It was desirable to consolidate all the revenue system as much as possible into one law; it was also desirable to know the precise state of our imports, and of our progress in manufactures. By a refer-

ence to commercial men, the House, besides those, might be acquainted with a very desirable object, to wit: how far certain articles would bear additional duties, or how far others admitted a diminution, proportioned to the wants of the country.

Commercial men were practical men, and, therefore, without disparaging the merits or talents of gentlemen composing the other committee, whose express appointment did not so pointedly relate to commerce, but to revenue, he thought the original motion ought to be carried.

Mr. GRISWOLD had no doubt, but that either committee would do justice to the subject; but it was a usual reference for all subjects relating to revenue. It certainly contemplated a total revision of that part of the revenue, and he again contended that all matters relating to revenue ought to go to the Committee of Ways and Means, for which purpose alone that committee was formed. He should not have risen, he said, but that he did not see the chairman of that committee in his seat.

The SPEAKER said, that either reference was perfectly in order; and that, therefore, either motion would have been proper. The reference to the Committee of Commerce and Manufactures, at present, had the preference, being first moved.

Forty-six rising in the affirmative, and being a majority, the reference moved by Mr. SMITH was carried.

MONDAY, December 14.

Another member, to wit: LEWIS R. MORRIS, from the State of Vermont, appeared, produced his credentials, was qualified, and took his seat in the House.

A memorial of John Hobby, late Marshal of the District of Maine, in the State of Massachusetts, was presented to the House and read; stating that he is now, and has been for more than five months past, confined in Portland jail, in said State, for a debt due from the memorialist to the United States, which he is unable to pay; and praying such relief in consideration of his past services, advanced age, and injuries sustained in his health by the imprisonment to which he has been subject, as to the wisdom of Congress shall seem meet.—Referred to the Secretary of the Treasury, to report his opinion thereupon to the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a report and estimates of the sums necessary to be appropriated for the service of the year one thousand eight hundred and two; also, a statement of the receipts and expenditures at the Treasury of the United States, for one year preceding the first day of October, one thousand eight hundred and one; which were read, and ordered to be referred to the Committee of Ways and Means.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency or in expediency of giving further time to persons entitled to military land warrants to obtain and locate the same.

Resolved, That a committee be appointed to report

H. OF R.

Disbursement of Public Moneys.

DECEMBER, 1801.

what provision ought to be made, by law, to authorize the Secretary of War to issue military land warrants; and that the committee also report, what provision ought to be made, by law, to authorize the Secretary of War to issue duplicates where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud.

Ordered, That Mr. DAVIS, Mr. JACKSON, Mr. TALLMADGE, Mr. DENNIS, and Mr. FEARING, be appointed a committee, pursuant to the said resolutions.

The Committee of Revisal and Unfinished Business reported, in part, that they had examined the Journals of the late House, and found in an unfinished state sundry bills, reports, and petitions, which they specify. The committee concluded with a resolution that all petitions, &c., depending in the last House, be taken up at the instance of a member, or on the application of the petitioner.

Mr. GRISWOLD moved that the Committee of Claims be directed to inquire into the expediency of allowing the refugees from Canada and Nova Scotia further time for exhibiting their claims for lands under the act for their relief.—Agreed to, 40 to 33.

DISBURSEMENT OF PUBLIC MONEY.

Mr. NICHOLSON called up the resolution, laid by him on the table, respecting the expenditure of public moneys by Timothy Pickering, Esq., late Secretary of State. Mr. N. observed, that some ideas expressed by a gentleman from Massachusetts, when this subject was before the House, had weight with him, and had induced him to modify his motion. It had been very properly, in his opinion, remarked, that such a motion should not point at any particular officer, but that it should be extended to all officers who superintended the disbursements of public money. He had, therefore, prepared another resolution, which, while it embraced his first object, would be seen to be connected with other objects equally interesting, as follows:

Resolved, That a committee be appointed to inquire and report, whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with the public money."

Mr. BAYARD declared his high pleasure at the liberality and candor which characterized the mover of the resolution; which had been manifested on the institution of it, as well as in the modification now offered. The motion, as it now stood, however, was not confined to one department, but embraced the whole. He thought it would be best to confine it to one department; but to give it a more retrospective effect, and to apply it not to Mr. Pickering only, but also to Secretaries of State that preceded him. He believed that, on investigation, it would be found that moneys disbursed had not been expended conformably to the strict

letter of appropriations. But such a deviation was the result of necessity. The public service forbade delaying certain measures, for the execution of which competent appropriations had not been made, to the next session of Congress. He believed that the same thing had occurred in other departments. It had been the custom, in cases where money was wanted for one, though appropriated to another, under the same department, to take it from the latter and to apply it to the former. This was illegal; but its being the custom palliates it.

Mr. B. could not but approbate the conduct of the gentleman from Maryland. He had, honorably to himself and honorably to Mr. Pickering, declared his conviction that Mr. Pickering had acted like a man of honor and integrity; and that though he had sanctioned departures from the letter of appropriations, yet, that this had been only as he had termed it a technical misapplication of money. For this inquiry, Mr. B. thought there was sufficient cause. The public mind had been agitated. The vilest slanders had been circulated. It had been averred, not merely that Mr. Pickering had violated the appropriation of public moneys, but that he had applied them to his own personal purposes. But, after the praiseworthy candor of the gentleman, he trusted that all false impressions would be removed; and that it would be found that all the noise made, arose from inattention to prescribed appropriations of money; and that the same inattention applied to the other departments.

Mr. B. desired to know the extent of the motion. If confined to the Department of State, embracing all the Secretaries, he would be in favor of it.

Mr. NICHOLSON would answer the gentleman from Delaware, that it was his intention that the motion should apply, as far as it affected the Department of State, not only to Mr. Pickering, but to his predecessors also; and he had so framed it as to include the Departments of War and the Navy, in case the committee saw fit so far to extend their inquiries. The accounts of the Department of State could be easily examined, while those of the War and Navy Departments, from the want of specific appropriations, precluded so precise an investigation. But the committee may examine the subject, and the terms of the resolution gave them authority to pursue their inquiries, if they thought fit, into those departments. They may also go back, if necessary. For himself, Mr. N. had no objection to this. Not that he thought such a measure necessary, as it was well known that the accounts of Mr. Pickering's predecessor had been settled, and that a suit, which had arisen from such settlement, was now depending. He had plainly answered the inquiries of the gentleman, and he hoped satisfactorily.

Mr. GILES observed, that he had always been in favor of giving the people the fullest information on the expenditures of public money. It would be recollected that he was among the first to institute an inquiry into the disbursements of the Treasury under this Government. It was

DECEMBER, 1801.

Disbursement of Public Moneys.

H. OF R.

true that his efforts were attended with but little success; they had been treated with but little respect; and he might, perhaps, add that they had been treated with some share of disrespect. He rejoiced, however, in the change which had taken place, and he expected that this House would hereafter be as jealous of public disbursements as he had long been.

The disbursement of public treasures excited, and deservedly excited, the national sensibility. The people felt it as all important. He was, therefore, well pleased with the resolution, whose effect would be to inquire into the conduct of all present and past Secretaries. As the whole would be included, it would exclude all party consideration.

He hoped that they were now assembled to legislate for the public good; and that, standing on the ground of truth, all calumny, let it come from whatever quarter, would be dismissed. He felt no ill will to any public officer, but he thought the official conduct of all of them should be tested by facts. He believed there had existed practices dangerous to our happiness, and his remarks were directed against those practices, not against any particular persons. If inconvenience and injury had sprung from the practices, we should find a remedy for them.

Mr. G. hoped that, at the commencement of a new Administration, all the doors of information would be thrown open, that the people might be well informed, and be able to repel all calumnies that were propagated, and know where real blame attached.

Mr. G. said, he wished to know when the practice alluded to commenced. The House sat here as a board of inquiry into the transactions of the Government, and without respect to any particular man; it was their duty to inquire into the conduct of all. He, therefore, hoped not only that this motion would pass, but that something similar to it would be incorporated in the standing rules of the House, whereby the act of inquiry would be general and a matter of course. If this should be done, the measures of all the departments would pass in review every session, and checks would be sufficiently multiplied to satisfy the public mind.

Mr. MITCHELL professed himself well pleased with the substitute offered to the original motion, which had, in some measure, excited his surprise. When an individual of great probity, and who had long served his country, was pointed at by the original motion, he could not avoid a painful sensation. The mover had wisely resolved, under the influence of such feeling, to modify his motion, and to make it general, instead of particular. Mr. M. did not know how business had been transacted in the departments, but he did know that suspicions and slanders had been levelled at our public officers. It was in the power of the House, if they were unfounded, to disperse them. The House might be considered as the protector of the innocent.

Mr. M. did not believe the gentleman pointed at had been guilty of corruption. He believed

what was so called, was an allowable departure from the strict letter of the law, in order to promote the public good.

Mr. BACON said, if he understood the motion, it had nothing to do with the conduct of Mr. Pickering—it not only contained no particular reference to him, but avoided all personal reference to any of the officers. It applied solely to the expenditure of public money. He, therefore, saw no reason for bringing him or any other person into view. When an inquiry had been made, it would be time enough to approve or condemn the conduct of public agents.

Mr. BAYARD perceived no difference of opinion among gentlemen. All expected in the abstract, as well as in the present case, that the conduct of public officers should be examined, and the result laid before the House. He, however, did not think the statement made by the gentleman from Virginia perfectly correct, when he told the House that his endeavors to obtain an inquiry into the state of the Treasury had been treated by a late House with disrespect.

Mr. B. said, his own information might be incorrect, as it was taken principally from the prints of the day; but he would say, that since he had been a member of that House, there had been no case, where an investigation was asked, in which a majority of the House had not sanctioned it without hesitation.

He recollected an investigation made at the instance of the gentleman from Virginia, into the conduct of a former Secretary of the Treasury; that the investigation did proceed; and that the very gentleman had a full opportunity of satisfying his own mind on the correctness of the conduct of that officer. If there had been a case in which a majority of that House had opposed an investigation, it was not within his knowledge. For his own part, he never had opposed, nor never would, the freest investigation of the measures of public agents, whatever Administration had the Government in its hands.

With respect to the contemplated motion announced by the gentleman from Virginia, Mr. B. did not know but it might produce the most serious inconveniences, if not injuries, to the Government. An imperious and irresistible necessity might force your officers to go beyond the limits of an appropriation. Appropriations that are made are usually prospective. They are necessarily, in many cases, imperfect. They may, of course, either exceed or fall short of the object for which they are intended; and you must, to make good the deficiency of one, draw upon the excess of another. This procedure had been introduced, and had been formed, he believed, into a general practice. He did not know that any department had exceeded its aggregate appropriation; but the redundancy of one appropriation had been made use of to supply the deficiency of another, under the same department. He did not know that any detriment would flow from such procedure. The officer who made the deviation, knew that he did it on his own responsibility, and that his conduct would be strictly scrutinized. From this view of

the subject he did not dread the inconvenience suggested.

Mr. B. said, he would illustrate his ideas by stating what had come to his particular knowledge. According to one of the stipulations made between the United States and Spain, a boundary line was to be run between the United States and the possessions of Spain, for which \$60,000 were appropriated. The act of running the line was in execution, unfinished, and our commissioners in the wilderness, when the appropriation run out; and this was during the recess of Congress. What was to be done? Were we to dis-appoint a foreign Government and stop the whole business? No. There being money appropriated to the department for other purposes, more than was required, the Secretary of State applied it to this purpose.

Mr. B. thought it proper, on this occasion, to state that Mr. Pickering had clearly shown that every dollar of public money that had gone through his hands had been applied to the public service. This information he had from the most authentic source; nor should he here state it were it not entitled to the fullest confidence.

Mr. B. concluded by observing that, in his opinion, the resolution was too broad; it applied to all moneys expended, no matter by whom; it was imperative upon the committee to make the most extensive inquiry. To obviate this difficulty, he would move, if agreeable to the mover of the original resolution, to confine it to the Heads of the Departments.

Mr. BACON thought the resolution stood very well. Instances would doubtless occur under every Government that would justify a deviation from the rigid prescription of law. But he was of opinion that it would be time enough to make such remarks as had fallen from gentlemen, when such instances are satisfactorily shown to have occurred.

Mr. GILES was happy in the calm spirit with which the session commenced, and he hoped the same spirit would attend the deliberations of the whole session. He must, however, be permitted to say that the gentleman from Delaware had been inattentive to the course of events, or he would have been more correct in his statement of the circumstances which had attended the case to which he (Mr. G.) alluded.

There was no doubt that after great efforts made by him to obtain an investigation of the official conduct of the Secretary of the Treasury, an inquiry had been made; but the result of that inquiry, as submitted, was far from being satisfactory, and did not embrace many of the material points. The gentleman was incorrect in another statement. He had not, as declared by the gentleman, yielded his assent to the correctness of conduct of the Secretary of the Treasury. The gentleman, doubtless, had the information he gave the House from certain newspapers that he and many other gentlemen were in the habit of reading.

But such authority did not authenticate the information. The fact was otherwise. The in-

quiry made had produced different convictions on his mind. From the inquiry then made, which, in its review the House may deem it proper to avail itself of, it would be found that the gentleman then at the head of the Treasury, had been employed for three years in drawing money from Holland, and that on this was founded the Bank of the United States. Mr. G. thought it barely necessary to make this explanation. He was sorry for the necessity of making it on this occasion, which he should not have done but that it was extorted from him by the incorrect remarks of the gentleman from Delaware, which rendered it necessary for him further to say, that he never had been, and never could be, satisfied with the then Secretary for breaking down the great barrier of appropriations.

As to the imperious circumstances, mentioned by gentlemen, which compelled a violation of appropriations, he agreed in the necessity which might sometimes exist; but when such a violation occurred, the causes of it ought to be truly imperious, and ought to be stated immediately to Congress, who was the only judge of the propriety of the measure, and not the man who had usurped their decision.

But the deviations are not new; they appeared to be of long standing, from which, in his opinion, great mischief and no good had resulted. He, however, did not wish to enter into a discussion until a report was made. He forbore, therefore, making any further remarks.

Mr. LOWNDES hoped the inquiry would take place; but thought the terms of the resolution too comprehensive. It does not say where the examination shall begin or where terminate. The committee may examine into the conduct of one officer, or every officer. He believed it to be the practice of all deliberative bodies to prescribe definite duties to its committees. He, therefore, hoped that the House would limit the report to certain points, that a definite duty may be required, and a definite report made. The task, unless defined, would be herculean.

Mr. CLAIBORNE was surprised at the expression of any sensibility for Mr. Pickering, or any other man; when he read that part of the Constitution that directed that all moneys should be expended under appropriations made by law, and heard gentlemen justify departures from this Constitutional injunction, he was truly astonished. If Mr. Pickering had departed from the directions of the law, to say so was no calumny. The committee proposed to be formed will inquire into all circumstances, and the public officers will be applauded or virtually censured. We are accountable to the people for the expenditure of their money, and it is proper that our public officers should be accountable to us.

The question was then taken on Mr. NICHOLSON's motion, without modification, and carried without a division, and a committee of seven members appointed, viz:

Mr. NICHOLSON, Mr. GRISWOLD, Mr. GILES, Mr. HASTINGS, Mr. JONES, Mr. BAYARD, and Mr. ELMENDORF.

DECEMBER, 1801.

President's Message.

H. OF R.

PRESIDENT'S MESSAGE.

The House, according to the standing order of the day, resolved itself into a Committee of the whole House on the state of the Union, the Message of the President being under consideration.

Mr. S. SMITH observed that, among other objects to which the President had attracted the attention of the House, was our commercial situation. We were informed that the United States were at peace with all nations, and that peace had taken place among the Powers of Europe. It became Congress to direct its attention to consequences that might proceed from such a state of things; and particularly to the injuries that might attach to our carrying trade. It was known that under the British Treaty, Great Britain, going perhaps beyond the meaning of the treaty, had imposed heavy countervailing duties on our goods, and that certain acts of France had the same effects, whereby many of our most valuable exports would cease to be carried in our own bottoms. Early under the present Government it had been deemed wise to lay discriminating duties, which had tended greatly to assist our carrying trade. Our capital had greatly increased, and if foreign nations restricted our trade by unfair regulations, it became us to adopt counteracting measures; and this could now be done with the more safety and effect from the force of our capital. He, therefore, moved the following resolution:

Resolved, That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty of tonnage between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, ought to be repealed; such repeal to take effect whenever the President shall be informed that the discriminating duties of foreign nations, so far as they operate to the disadvantage of the commerce of the United States, shall have been abolished."

Ordered, To lie on the table.

Mr. GILES.—Among the various topics of the Message is that in relation to the Census. It is important that Congress should be early occupied in deciding the ratio of representation, as many of the State Legislatures are now in session, and will be specially convened, if they shall rise before Congress shall pass a law upon the subject. He, therefore, moved the following resolution:

Resolved, That the apportionment of Representatives amongst the several States, according to the second enumeration of the people, ought to be in a ratio of one Representative for every thirty-three thousand persons in each State."

On which the question was taken, and the motion carried without a division.

Mr. S. SMITH said, another important member of the President's Message respected our situation with the Barbary Powers. It became Congress immediately to come to a decision that would enable the President more efficiently to protect our trade. He, therefore, moved the following:

Resolved, That it is expedient that the President be

authorized by law, further and more effectually to protect the commerce of the United States against the Barbary Powers."

Mr. NICHOLSON said, he did not like the resolution, as it had reference to a point with which we were unacquainted. The President had informed us that he had sent a squadron into the Mediterranean. It may have been a wise act, but he did not wish the House to commit itself until fully informed. He moved, with this view, to strike out the words "further and more effectually."

Mr. GILES proposed that the motion lie on the table until the documents on this subject were printed; which was agreed to.

Mr. MITCHILL alluded to his having presented two petitions from aliens in New York, and then moved the following:

Resolved, That the laws respecting naturalization ought to be revised."

Mr. GILES thought the motion ought to be so drawn as to bring the principle before the House, for which purpose he moved to add "or amended." Agreed to.

So the motion, as amended, was carried.

The Committee then rose, and reported the two resolutions agreed to.

TUESDAY, December 15.

A memorial of William Kilty, chief judge of the circuit court of the District of Columbia, was presented to the House and read, stating that by the last section of an act of the last session of Congress for altering the time and places of holding certain courts therein mentioned, it has been made the duty of the memorialist to hold the district courts of the United States in and for the District of Potomac, in virtue of his office, under a prior act of Congress concerning the District of Columbia; and praying an increase of the compensation allowed him by law, in consideration of the additional labor and inconvenience to which he is thereby subjected.—Referred to Committee of Claims.

The House proceeded to consider the resolutions reported yesterday from the Committee of the Whole on the state of the Union: Whereupon, the first resolution being again read, in the words following, to wit:

Resolved, That the apportionment of Representatives amongst the several States, according to the second enumeration of the people, ought to be in the ratio of one Representative for every thirty-three thousand persons in each State."

Ordered, That the consideration of the said first resolution be postponed until to-morrow.

The second resolution being again read, was, on the question put thereupon, agreed to by the House, as follows:

Resolved, That the laws respecting naturalization ought to be revised and amended.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. MITCHILL, Mr. GODDARD, Mr. SMILIE, Mr. THOMPSON, Mr. LEWIS R. MORRIS, Mr. WADSWORTH, and Mr. STANFORD, do prepare and bring in the same,

Ordered, That it be an instruction to the committee to whom it was referred to report by bill, or otherwise, whether any, and, if any, what alterations or amendments are necessary in the act concerning post offices and post roads, that they make provision for extending the privilege of franking to the Attorney General of the United States.

BARBARY POWERS.

The House resolved itself into a Committee of the Whole on the State of the Union, the following resolution being under consideration:

Resolved, That it is expedient that the President be authorized by law, further and more effectually to protect the commerce of the United States against the Barbary Powers."

Mr. NICHOLSON said, that when this resolution was yesterday laid on the table, he had moved, for reasons that he had assigned, to strike out the words "further and more." He was, on reflection, more and more persuaded of the accuracy of his objections to the unqualified terms of the original motion. If we adopt it, we pledge ourselves to increase the naval force at present at the disposition of the President. But if his modification were agreed to, every gentleman would remain at liberty to put his own construction on the words "effectual force." Uninformed as we were as to the necessity of increasing the force, it would be highly improper to commit ourselves by any precipitate decision. He, therefore, moved to strike out the words "further and more."

Mr. GILES opposed the striking out the words, which, in his opinion, did not relate to the quantum of force placed under Executive disposition, but to the measures proposed to be taken by the Executive. He should vote for the motion unamended, though he had been, and still was, as averse as any gentleman in that House to an improper augmentation of the Army or Navy. With respect to the Navy, he was friendly to it as it now stood, or to an augmentation of it to meet any particular emergency.

Mr. S. SMITH said, that as he understood the resolution, it went not to pledge any man to augment the Navy, but to authorize the President, with the present force, to take measures for the defence of our trade. We were at war with Tripoli. Against that Power, therefore, the President felt himself at liberty to act efficiently. But gentlemen should advert to our situation with regard to Algiers and Tunis. Those Powers may become hostile. They may become so in the recess of Congress. It may be necessary without delay to protect our trade against them. Will you then confine the President, in relation to these Powers, to a Peace Establishment? Certainly, when these circumstances were duly weighed, no gentleman will refuse the power which this resolution is intended to confer.

Mr. SMILLE was in favor of the amendment for one reason. He was ready at all times to grant commerce every necessary protection. But, by adopting this resolution we pledge ourselves, without inquiring into the necessity, to extend further

protection. No doubt further protection will be required. But he thought it premature to make any pledge until all the documents connected with the subject were before the House.

Mr. MITCHILL suggested the propriety of amending the original resolution, by inserting after the word "law," "if necessary." This would render the resolution conditional. To the resolution he was a friend. For, when the aspect and extent of the United States were considered, it must be evident to every man that we were a commercial people. The bulk and extensiveness of our produce required vessels to carry it to foreign countries. The carriage required protection. The Government must of course give protection. With respect to the Mediterranean expedition, no plan under the Government had been better devised; and he had no hesitation to say that if the Mediterranean trade required further protection, he would be for making further appropriations of the public moneys.

Mr. NICHOLSON said he could not agree to the suggestion of the gentleman from New York, as by adopting it we should do nothing. How does the matter now stand? Congress has put into the hands of the President six frigates, which he had used for the public service in the Mediterranean. This was not a fit time to express his opinion on the propriety of the measures of the Executive. But when a fit occasion did offer, he would have no hesitation to say the President had done right.

To return to the point—the President had now six frigates. If we agree to the resolution, do we not pledge ourselves to increase this force?

One squadron had been sent to the Mediterranean; another was in operation to go there, he understood. This was all right. But there followed no necessity from these circumstances to pledge ourselves to increase the force.

We were not even acquainted with the sentiments of the President on this point. His communications did not inform us that he desired a larger force. If he did desire it, he would say so. He had, on the contrary, recommended a reduction of the Army and Navy; and to desire an augmentation of the latter, would be, in the same breath, to say one thing and another.

Mr. EURIST.—The President, in his communications, has informed us that he has hitherto acted on the defensive. The simple question now is, whether he shall be empowered to take offensive steps. This has no relation, therefore, to an increase of the force, nor shall we, by adopting it, pledge ourselves to such effect.

Mr. GILES was happy that the discussion was one more of words than of principles. He perfectly coincided with the gentleman from Maryland, who had moved the amendment, in his general sentiments. It would be wrong in this House prematurely to pledge itself for an increase of naval force. But the words of the resolution do not relate to the quantum of force, but entirely to the measures to be taken with any force. When the President is authorized further and more effectually to protect our trade, it was not said that

DECEMBER, 1801.

Discriminating Duties.

H. OF R.

we will give him four or six additional frigates; but merely that he is to have means, more or less, which shall be adequate to make offensive operations against those who shall make offensive operations against us.

It was well understood that he was for keeping the Navy within proper bounds; but if ever there was a case where it was required, this was the case; and he acknowledged that he was for empowering the President to authorize, not merely a dismantlement of a vessel, but her capture.

Mr. S. SMITH said it was true that six frigates had been given to the President; but it was also true that, when given, they were contemplated chiefly as a nursery for our seamen, in which view they were directed to be only two-thirds manned. Would gentlemen contend that it was fit they should go out in this insufficient state? By the prescriptions of the law, the President deemed himself bound. Already the whole number of seamen authorized by law are employed on board four frigates; and for the want of hands the second squadron cannot be fitted out. The time of the first would expire in one year from their departure. It was, therefore, absolutely necessary that there should be more seamen.

The question was then taken on Mr. NICHOLSON'S amendment, and lost.

When the original motion of Mr. SMITH was carried.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. EUSTIS, Mr. SAMUEL SMITH, Mr. DANA, Mr. MITCHILL, and Mr. JONES, do prepare and bring in the same.

DISCRIMINATING DUTIES.

The following motion, made by Mr. S. SMITH, was then taken up, viz :

Resolved, That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty of tonnage between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, ought to be repealed; such repeal to take effect whenever the President shall be informed that the discriminating duties of foreign nations, so far as they operate to the disadvantage of the commerce of the United States, shall have been abolished.

Mr. GRISWOLD hoped the gentleman who had made the motion before the committee, would assign the grounds on which it was made. The acts imposing discriminating duties had long existed, with great and good effect to our commercial interests. He wished to know what effects would flow from a revocation of those restrictions, and whether the proposed measure would not operate to the prejudice of the United States. In its effects, the Eastern States would be particularly interested, and the more especially at this period when, from the consequences likely to ensue from peace, our ships may be thrown out of employment.

Mr. S. SMITH assured the gentleman from Connecticut that if the measure he proposed had, in

his opinion, the least tendency to injure the commerce of the country, he should not have advocated it, as well from a regard to the deep stake he himself held, as from a regard to the interests of his constituents. The system of discriminating duties was a wise one in the early existence of the Government; our own shipping was then unequal to the carrying of our produce. The discrimination operated as a charm in producing a rapid extension of shipping beyond the most sanguine expectation.

Our trade remained in this situation until the formation of the British Treaty. By that instrument Great Britain was permitted to lay countervailing duties, and these had been so imposed as, in time of peace, to destroy the advantages attached to our shipping over theirs. The effects of this regulation were not immediately felt by us. England was at war, and her freights were charged with war insurance, while ours were exempt from such charges. Under these circumstances English bottoms could not enter into competition with American, as the war insurances of the former exceeded the inconveniences imposed on the latter.

But peace being now restored, British ships will have such an advantage over our ships, that no man will ship tobacco, rice, or any other bulky articles in American bottoms.

The effect of the countervailing duties of England would be, that an American ship carrying tobacco to England would pay eighteen shillings sterling more on the hogshead than a British ship. The usual freight of a hogshead was thirty-five shillings. The difference, therefore, constituted more than one-half.

Our situation was still worse in relation to France. Of the restrictive acts of that Government he could not give a precise idea; but he was enabled to state, from a conversation had with a gentleman from that country, high in office, that so decided a preference was given to her over foreign bottoms, that a duty of ten livres upon every hundred weight of tobacco was laid on the latter, which was equivalent to one hundred and twenty livres on a hogshead. He further understood that six per cent. difference was imposed upon all other articles. Peace being now restored, French vessels will enter our ports, and become the carriers to France of all our productions.

How were these effects, so alarming to our trade, to be met? He replied that it was by taking off our discriminating duties, and by placing our merchants on equal terms with the merchants of other nations.

And, sir, said Mr. S., have we not enterprise; have we not capital, to hold an honorable, a successful competition with the whole world? No man that knows the character of an American merchant will doubt his ability to sustain such a competition. The discriminating duties, once useful, have ceased to be so. Our shipping has increased, and we now want more to enter into the ports of other nations, than that other nations should enter into ours. We are willing to free trade from its trammels. Let the trade be taken

by those who can carry the cheapest. As a merchant, he was convinced that we could carry cheaper than any other nation. Our materials for ship-building were at hand; were cheaper, and we could navigate our ships with fewer seamen than any other nation.

The crisis required that we should take efficient measures. Unless such measures be taken, our commercial rivals will seize the sweets offered by the present opportunity. It was true that in two years the British Treaty would expire. But he understood that the British Ministry demurred to the construction which considered that part of the treaty under which countervailing duties were imposed as expiring at that time.

Mr. GRISWOLD declared himself not satisfied with the explanation made by the gentleman from Maryland. It was certainly desirable to secure the carrying of our bulky articles in our own ships; and if the resolution would have this effect, he should be decidedly for it. But he could not discern such to be the effect. With regard to England, it was true that tobacco was there charged with a heavy duty; but it was well known that England consumed but a small portion of what was sent there—the rest was exported, and a drawback of all duties allowed. As to the great mass of this article, therefore, it was not charged any more than it would have been charged, had it been directly exported to other countries.

For his part, he firmly believed, that our carrying trade would be effectually injured by allowing a free trade, whereby English ships would enter our ports upon the same terms with our own ships. It was well known, that before the war, the tobacco imported into France had been farmed out by the Government, and that it had been a great source of revenue. He was persuaded that France would not permit that article to be free.

From these and other considerations, Mr. G. declared himself unprepared to decide upon a question of so great importance. He was not prepared to say what would be the effects of the principle offered to the House, particularly as the resolution does not say, in the event contemplated, who shall decide, whether the President or Congress.

Mr. S. SMITH agreed with the gentleman from Connecticut that the great bulk of our exports required an uncommonly large tonnage. But this was an argument why we should secure this important object even if we lost the carriage of the imports of other nations.

The gentleman had referred to the mass of shipping in the Eastern States; but he would inform the House that the Middle States were competent to carrying their own produce. The gentleman was mistaken in one of his deductions, viz: that which respected our merchants deriving no inconvenience from English duties, as to the quantity of tobacco exported from England on which a drawback was allowed. He affirmed the injury to be great. For he would ask what merchant would like to export to England under the uncertainty of his exporting his produce again to other countries?

The gentleman was also mistaken in his allusion to the farmers-general of France. They did not monopolise that article. Every man had a right to go there with tobacco. They were only the venders of it. The gentleman was, therefore, further mistaken, when he said our merchants could not compete with French merchants.

Mr. S. was anxious that the earliest attention of Congress should be paid to this important subject. France had not at present vessels to carry our produce; availing ourselves of the situation in which she was at present placed, we might by this proposition gain her assent to the principles of a free trade, whereby a large share of our carrying trade would be preserved, which otherwise might be lost. Unless the opportunity that now offered was immediately seized it might never return.

Mr. GILES had at first thought the resolution a very plain one; but he was almost induced to think differently of it on finding gentlemen, who were deeply interested in its effects, holding contrary opinions. As to himself, Mr. G. said, he did not feel a very lively interest on the subject. The Southern States, in a pecuniary view, would not be directly affected by it, as their interests would not be materially promoted or impaired, whether their productions were carried by foreign merchants or by those of other States. Not but that they would greatly prefer the latter mode.

From the remarks which had fallen from the gentleman from Connecticut, he appeared entirely to mistake the effects of the resolution.

Mr. G. believed the countervailing duty laid by the British to be unauthorized by the treaty. Taking our duties as the basis they had countervailed them, and applying the countervailing standard to separate and distinct articles, they had imposed heavy duties upon them, below, however, the maximum; giving up, as they said, a right, and granting what they called a favor. The result was the preference of British bottoms over American, as stated by the gentleman from Maryland.

Under the British Treaty, Britain was authorized to lay countervailing duties, but we were prohibited from countervailing them. The only question, then, was, whether we would patiently submit to the present inequality, whereby nearly the whole of our carrying trade might be destroyed, or take our chance in an equal competition.

The ideas of the gentleman as to dispatch were certainly correct. No time ought to be lost consistently with deliberation. It was not, however, the desire of Mr. G. to be precipitate. The moment was propitious; we ought to seize it. France is now without shipping, but she has great resources, and may, unless we adopt decisive measures, buy from us those very vessels with which we now carry our own produce, for the purpose of carrying it for us. Hence, it was desirable that an early decision should be had. If delayed till the next session of Congress, or even for six months, great mischief might be done, as he presumed the laying up our merchant vessels for six

DECEMBER, 1801.

Ratio of Representation.

H. OF R.

months will be nearly equivalent to a destruction of them.

Mr. GRISWOLD offered some additional remarks; when, on motion of Mr. RANDOLPH, the Committee rose, leaving the question undecided.

WEDNESDAY, December 16.

. Another member, to wit: BENJAMIN HUGER, from South Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying an annual return, ending the ninth instant, containing an abstract of all the returns made to him by the Collectors for the different ports in the United States, pursuant to the "Act for the relief and protection of American seamen;" also, extracts from the communications received from the agents in foreign countries for the relief of American seamen; which were read, and ordered to lie on the table.

The Committee of Elections made a further report, stating certain members to be duly elected; and further stated, that in consequence of the erection of the Mississippi Territory, under the ordinance of Congress, that Territory was entitled to a Delegate when the Territory was entitled to a Legislature. This period having arrived, the committee report an opinion that NARSWORTHY HUNTER be considered as a Delegate, with the right of deliberating, but not of voting.

Mr. MILLEDGE could not agree to the report, as by so doing he would vote for a measure that would affect the sovereignty of Georgia. He, therefore, moved a reference to a Committee of the Whole, in order to have the subject discussed. Agreed to, and made the order for Friday.

RATIO OF REPRESENTATION.

The House, according to the order of the day, proceeded to consider the first resolution reported yesterday from the Committee of the whole House on the state of the Union, in the words following, to wit:

"Resolved, That the apportionment of Representatives amongst the several States, according to the second enumeration of the people, ought to be in a ratio of one Representative for every thirty-three thousand persons in each State."

Mr. GRISWOLD remarked that the effect of adopting this resolution would be an increase of members in that House; that the number would amount to nearly one hundred and fifty. He was of opinion that the present House was sufficiently numerous for every correct purpose, as well of legislation, as for obtaining all desirable information from the people. Should an augmentation be made, the consequences would be an increase of expense, and business would inevitably be protracted. He moved, therefore, to strike out the words "thirty-three," meaning, if they were stricken out, to propose the substitution of a larger number.

On this motion a desultory debate ensued, in

which Messrs. GRISWOLD, S. SMITH, NICHOLSON, GILES, BAYARD, ALSTON, ELMER, EUSTIS, SPRIGG, and other gentlemen, took part.

Mr. GRISWOLD stood alone in advocating an apportionment of one member to every 40,000 persons.

Messrs. GILES and BAYARD were for one member for every 30,000.

Messrs. S. SMITH, NICHOLSON, and EUSTIS, were for one member for 33,000.

Mr. ALLSTON was in favor of one representative for every 31,000.

The preferences avowed by the several speakers, appeared to arise from the application of that divisor to the State from which each member came, which left the least fraction.

Some gentlemen, however, declared, and particularly Mr. GILES, that he had made no calculation, and that his preference of the smallest ratio proposed was the preference of principle.

Those in favor of a small ratio argued that, though the expense attending the compensation of the members might be somewhat increased; yet, that it would be trifling compared with the great advantages that would result from a larger representation; that such a representation would be productive of true economy, as it would oppose all extravagant expenditure of money; that the weight of expense incurred by the Government did not arise from the expense of the civil list, which formed but a speck in the mass of expenditure. That it was important to this Government to adopt those measures which would insure the respect and the confidence of the people; that this end would be best attained by each Representative being familiarly acquainted with the interests of his constituents; and that this could only be the case, when the number of his constituents were limited within certain bounds. It was true that it had been said that a body of more than one hundred, even though it be composed of philosophers, was a mob; but it was replied that the long experience of this country had proved the reverse, for that many of the State Legislatures consisted of more members.

These ideas were but feebly opposed. The diversity of opinion expressed, chiefly arose from a division of the House on the ratios of thirty thousand and thirty three-thousand. The former was advocated principally from a regard to Delaware and Rhode Island, which, by its adoption, would have each two Representatives, instead of one, if a higher ratio were preferred.

During the discussion, it was moved to strike out the word "three;" leaving thirty thousand as the ratio. This motion was lost—yeas 43, nays 46.

Mr. BAYARD then moved to strike out "thirty-three," leaving the resolution blank, in order that it might be filled up with such number as should be agreeable to the House.

This motion was opposed chiefly by Mr. NICHOLSON and Mr. EUSTIS, who were of opinion that the progressive increase of the members would be sufficiently large on the ratio of thirty-three thousand persons to a member. They were also fur-

H. OF R.

Public Printing.

DECEMBER, 1801.

ther in favor of this number as it left the fewest fractions. The only two States much injured by it would be Delaware and North Carolina; whereas if the ratio was increased to thirty-five thousand, New Jersey would have a fraction of 31,000; Delaware of 26,000; Maryland of 30,000; Georgia of 23,000; and Kentucky of 29,000.

On the question being taken for striking out "thirty-three," there rose only thirty-one members. It was therefore declared to be lost.

The question was then taken on the original motion, and carried without a division, and a committee of three members appointed to bring in a bill conformably thereto.

THURSDAY, December 17.

Another member, to wit: DANIEL HEISTER, from Maryland, appeared, produced his credentials, was qualified, and took his seat.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying two statements of the importations in American and foreign vessels, from the first day of October, one thousand seven hundred and ninety-eight, to the thirtieth day of September, one thousand seven hundred and ninety-nine; also, similar statements, from the first day of October, one thousand seven hundred and ninety-nine, to the thirtieth of September, one thousand eight hundred, inclusive; which were read and referred to the Committee of Ways and Means.

The SPEAKER laid before the House a report from the Commissioners of the Sinking Fund, enclosing a report made to them by the Secretary of the Treasury, and a statement of the proceedings which have been authorized by the Board since their report of the twenty-eighth of November, one thousand eight hundred; which were read, and referred to the Committee of Ways and Means.

Mr. RANDOLPH, a member of the Committee of Ways and Means, informed the House that certain documents just directed to be printed, owing to the state of the manufacture in this place, could not be printed in less than twenty days; during which time the proceedings of the committee would be arrested. He, therefore, moved a committee be appointed to devise a plan for expediting the printing work of the House.

A committee of three, viz: Messrs. RANDOLPH, NICHOLSON, and L. R. MORRIS, was appointed.

It was moved that the House do go into a Committee of the Whole on the Apportionment bill.

Mr. BAYARD moved to postpone its consideration till Monday.

After a short debate, the question of postponement was lost—yeas 39, nays 45.

The motion to go into a Committee of the Whole on the above bill was then withdrawn, under the understanding that it would be renewed to-morrow. The bill was ordered to be printed.

The committee, to whom was referred the resolution for a new apportionment of Representatives among the several States, reported a bill, which gives to the States the following members,

viz: New Hampshire, five; Massachusetts, seventeen; Vermont, four; Rhode Island, two; Connecticut, seven; New York, seventeen; New Jersey, six; Pennsylvania, eighteen; Delaware, one; Maryland, eight; Virginia, twenty-two; North Carolina, twelve; South Carolina, eight; Georgia, four; Kentucky, six; Tennessee, three. The bill was read a second time, and referred to a Committee of the Whole this day.

FRIDAY, December 18.

Mr. NICHOLSON, from the committee appointed, presented a bill to amend the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" which was read twice and committed to a Committee of the whole House on Monday next.

PUBLIC PRINTING.

Mr. RANDOLPH, chairman of the committee appointed to see what alterations were necessary to expedite the printing business of the House, reported that the committee thought it expedient to request the Heads of the Departments to attend and inspect the printing of all such documents, reports, and statements, as are directed by law to be annually laid before the House; and that it was necessary that a printer to the House be appointed, who should be responsible for the faithful and prompt execution of all business confided to him by order of the House.

Mr. GRISWOLD wished the report altered to a resolution; to the first part of it he should agree, but doubted whether the latter part would be concurred in. He did not think it sufficient or expedient to appoint but one; the business would require more, particularly at the close of the session. He could see no reason for altering the mode in which the printing business was now and had ever been done; it now lies with the Clerk, who is empowered to employ as many persons as he pleases or deems expedient. If such printer should be appointed, he will become an officer of the House; he will not be responsible to the Speaker. We have officers enough already; it is needless to multiply.

Mr. RANDOLPH said the committee had considered these objections; but, he believed, sufficient reasons might be offered to convince the House of the expediency of this measure. If one be appointed, he will know his duty and be prepared; he will employ as many hands as he wishes. Had there been one appointed by the House last session, he would have been on the spot now, fully prepared promptly to execute the orders of the House; nor should we have such delay as that by which we are now unfortunately troubled.

Mr. NICHOLSON.—We have but few printers in this vicinity, nor is it probable their number will be soon increased. The printing for the House is said to be worth \$4,000 per annum: if one be appointed for that purpose he will have everything in readiness, and be responsible for his faithful duty.

Mr. S. SMITH thought a printer thus appointed

DECEMBER, 1801.

Apportionment Bill.

H. OF R.

might perform a considerable part of his duty previous to each session: to many documents he might attend. Mr. S. wished such printer appointed as a permanent officer.

Mr. LOWNDES.—If he thought such officer necessary he should not oppose the measure, but at present he did not think such appointment necessary. He conceived the Clerk to be responsible to the House; that it was his duty to attend to the printing; that he could employ whom and as many as he pleased. Whence, then, the necessity of such appointment? Besides, such printer will become an officer of this House, must have a salary, and will be called the printer of the House: and, if printer of a paper, whatever sentiments might be advanced in such paper would perhaps be considered as the sentiments of the House.

Mr. EUSTIS considered it altogether unnecessary, disadvantageous, and troublesome.

The first was carried: that relating to the appointment of a printer not carried; about twenty only rising in favour of it.

APPORTIONMENT BILL.

The House resolved itself into a Committee of the Whole on the bill for the apportionment of Representatives among the several States, according to the second enumeration.

Mr. MACON (Speaker) moved to strike out "thirty-three," the ratio fixed by the bill, for the purpose of inserting "thirty."

Mr. M. observed that it did not appear from the different ideas expressed by different gentlemen, that any material inconvenience would result from the increased number of members that would be created by the ratio of thirty thousand being adopted. Whereas on the ground of principle a great benefit would flow from it. In his opinion, to secure the confidence of the people in the Government, it was essential to lessen the districts as much as possible, that the elector might know the elected. At present, particularly in North Carolina, they were so large that a voter depended more upon the opinion of others than upon his own information. The ratio of thirty thousand would not introduce into the House more than one hundred and sixty members, which number did not equal that of the members in several of the State Legislatures, of which no complaints had been made, and from which no inconvenience had arisen. He felt particularly for Delaware, which would be severely affected by the ratio in the bill.

Mr. GILES hoped the motion would obtain. As far as respected the State of Virginia, he felt little or no anxiety. But he, on general principles, preferred the smallest ratio. It was an essential principle of a Republican Government that the people voting should know whom they vote for; that the elector should be well acquainted with the elected. To insure this effect the districts should be small. He was aware of the impossibility of reaching this point precisely: but it was our duty to approach it as nearly as possible. Though, in relation to the situation of Delaware, he did not subscribe fully to the ideas of some

gentlemen, as the case was an extreme one, and he knew the impropriety of relying upon such case, as the reasoning from an extreme generally led to an extreme, yet he thought the relative circumstances of Delaware and Virginia, as stated, to be correct; for it was a fact that Virginia, entitled to twenty-two Representatives, was not so much affected by any given fraction, as Delaware, entitled to but one Representative.

But the reply to the inequality of her representation here is, that she has two Representatives in the Senate; and it is inferred that she will hence derive a larger weight in the Union. Such was the theory of the thing. But what was the result of experience? Mr. G. said, he had once supposed that the small States would have an undue advantage over the large States. His opinion had since altered. All the small States were surrounded and compressed by large States, and derived their political sympathies from them. It was true, the small States had each two votes in the Senate. Yet, what superior advantage have they in the Government generally? He was, therefore, clearly of opinion that the claims of the small States to the largest representation that could be constitutionally given them, ought not to be affected by their representation in the Senate. The fact was that this House was the basis of confidence in the Government. We had heard much about an alarm, about disorganization, and the disposition of large States to swallow up the rights of all the other States. He would ask, whether the adoption of a large ratio would lessen this clamor, promote the general confidence, and increase the stability of the Government?

Mr. JONES hoped the amendment would prevail. There was not a doubt but that the small States would be materially affected by the ratio in the bill. It was true, that, according to the theory of our Government, the members of that House did not represent the States. But, what was the fact? In truth, our representation was that of absolute locality. Can I, said Mr. J., represent as effectually Massachusetts, or Vermont, as Pennsylvania?

Mr. VAN NESS declared himself to be uninfluenced by local considerations, or particular inconveniences. If we attempted to avoid them by the adoption of any ratio, we should be mistaken. The inequality of States could not be remedied. If a remedy was sought, it must be found in the Senate. The large States had not that exclusive weight which had been stated. If the number of the large States in this House should overbear the smaller States, they would find their protection in the Senate. The fractional loss, so much dwelt on, was not a loss to the State, it was only a loss to that part of the State which was unrepresented, and the loss would be the same to a larger State, if its unrepresented fraction was equally great.

Mr. V. N. said, it had always been his desire to consult the wishes of the people and to conform to them. He considered those wishes as solemnly expressed in the Constitution, which had decided that the ratio should not be less than thirty thou-

sand, and in the law passed immediately after the adoption of the Constitution, fixing the ratio at thirty-three thousand.

As to the experience of the States, so often appealed to, he would state that of his own. The constitution of New York originally fixed the representation in one branch at three hundred, and in the other at one hundred and fifty. After suffering the inconveniences of so large a legislative body, a convention had been called, which reduced the one branch to one hundred and fifty, and the other to thirty-two members.

It was the opinion of some gentlemen that the essential principle of our Government was the equal representation of the States in the Senate. This was a mistaken opinion. The federalism of the Government might have been as well preserved by an unequal representation in the Senate. The feature was not the offspring of principle, but of concession. If we looked to antiquity, we would observe the smaller States of a Confederation always inferior to the larger; and he recollected one case of a Confederation, in which one State was entitled to three, another to two, and the third to one representative.

Mr. SMILE heartily concurred in opinion with the gentleman from New York, that we ought not to respect local feelings, but that we ought to go upon general grounds. Possessing these principles, we still know how difficult it is to do complete justice. For himself he would be satisfied with the ratio of thirty-three, if he could not obtain that of thirty thousand. He was in favor of a large representation, because he relied on that for safety and economy. For, when he considered the great powers of the other branches of the Government, (powers, in the opinion of some men, too great,) he thought it was their duty to impart to that House all the Constitutional power that could be conferred. This would enable the House to resist all encroachments attempted to be made upon it.

Mr. BACON said that, for himself, he was satisfied with the present ratio, as it stood in the bill. This was the ratio which had been adopted when our numbers were much less than they now are; that it did not appear but that it had given general satisfaction; and that no other inconveniences had accrued than such as might be expected to follow from the adoption of any other ratio whatever. It would seem to be rather unnatural, and the reverse of what was contemplated by those who enacted the Constitution, as our numbers increase, to lessen the ratio of representation. He was, therefore, against striking out the number thirty-three, with a view to insert a lower number.

A divisor of thirty-three thousand would now give a House consisting of at least one hundred and forty members, which, even on the present ratio, must soon become not only too expensive, but unwieldy. It had been repeatedly urged that the present ratio leaves a very large fraction to the State of Delaware. This, it was admitted, was matter of regret; but that, let what ratio might be adopted, such fractional parts must be expected to fall somewhere; that such fractions

would be likely to vary, from time to time, and shift from State to State, as the population may increase and vary in the several States. And Mr. B. did not conceive that the particular case of Delaware, hard as it might seem, furnished a sufficient reason for altering an entire system.

As to what had been urged of the disadvantage to which Electors were subjected in large districts, of not knowing the characters of their Representatives and candidates, Mr. B. observed that this was a disadvantage which was lessening with rapidity from year to year, and from one election to another; that to whatever inconvenience electors may heretofore have been subjected by the want of a knowledge of their candidate, from this inconvenience they are already in a great measure relieved; and it must, in a very short time, entirely cease to exist. If any inconvenience of this kind still remains, by an election or two more, it would be entirely removed. It had been urged that Delaware had but one Representative, and every State ought to have two. But, why two, Mr. B. queried, rather than three? It is true, that two are better than one; and three are better than either one or two; for, as we have long since been told, "a three-fold cord is not easily broken."

Mr. B. concluded by saying that, as thirty-three thousand was the ratio which had been adopted when our population was much less than it now is; and as it has been practised upon without any inconvenience or general dissatisfaction, he was unwilling to risk the uncertain consequences of an innovation at this particular time.

Mr. T. MORRIS was of opinion that the arguments drawn from the representation in the Senate had nothing to do with this question. The House had a Constitutional duty to perform, that was highly interesting. The only question is, How it shall be performed? The people ought to be fully represented; that is, the number of their representatives should be increased until that number became inconvenient for the transaction of business. He had never been a friend to an enormous Legislature; such as that in France, a mob convention. He thought the idea incorrect that this House should acquire a weight that might cause it to bear down the other branch of the Legislature. He hoped, if any such attempt should be made, that body would have sufficient spirit to resist it; and he trusted there would always be firmness enough here to resist any encroachment attempted.

As to the present ratio guiding, he did not think that the House should be governed by any uniform rule. They ought, on the contrary, to be governed by the existing circumstances. Not believing that any inconvenience would arise from the augmented representation on the ratio of thirty thousand, he would be in favor of it from the reasons he had assigned.

Mr. DENNIS did not rise to say anything new on the subject; but merely, as he had altered his mind since the business was before the House, to assign some of the reasons which had influenced him. He was now in favor of the ratio of thirty thousand. His first impressions were against it

DECEMBER, 1801.

Apportionment Bill.

H. OF R.

from an apprehension that the increased numbers of the House would increase expense, and produce disorder. But he acknowledged himself convinced by the arguments which had fallen from the gentleman from Virginia, which he thought counterbalanced his previous apprehension. Mr. D. thought it all important to preserve an equilibrium between the different departments of the Government, and he was convinced that this would be best effected by making the representation in this House as large as the Constitution permitted, and convenience justified. If we expected to retain the confidence of the people, it was necessary to increase the Representative branch; for it would be in vain to look for that confidence necessary to give it a proper portion of energy, unless there existed a sympathy between the elector and the elected.

Mr. RANDOLPH hoped the amendment would not obtain. The difference between the effects of the two ratios was not very important; but it was highly important that a doctrine so heretical and improper as that which had been avowed, should be exploded on its first annunciation. He meant that doctrine which considered this House as the Representatives of the people. When the Constitution was formed, two great difficulties presented themselves. The large States refused to confer on the Government greater powers than those it enjoyed, which deeply affected their wealth and their numbers, unless, according to the ratio of their numbers, they should participate in the administration of it; while the smaller States withheld their concurrence, unless their sovereignties were guarantied and protected. These two difficulties were surmounted by the plan of the present Constitution; according to which the members of this House were the Representatives, not of the people, but of the States in proportion to their numbers. This was the theory of the Government for which he must contend.

Mr. R. believed that the strongest objection urged against the adoption of the Constitution, was, that it tended to a consolidation of the States. But when he looked into it with a Federal eye, (and with no other eye could he ever look at it,) he saw the State sovereignties in all its parts acknowledged and protected. Of this, the very bill was itself a proof. For the apportionment was not among the people, but among the States, according to the numbers of each. Believing that this House is the representative of States, it was his opinion that so long as the relative weight of States could be preserved, it was immaterial that each State should be represented by a large number of members.

It was with extreme regret, and some diffidence, Mr. R. said, that he differed from his colleague on this subject. His colleague wished to increase the House to such an extent as to make it the depository of the whole confidence of the people. Mr. R. wished it to possess that confidence so far as related to Federal objects, but no further. Increase it, according to the theory of gentlemen, make it in point of numbers, a British Parliament,

or a French Convention, and you will proportionably diminish the confidence of the people in the State governments. They will become feeble barriers against the powers of the General Government; and the people will inquire for what purpose they elect their State Legislatures. Mr. R. believed it to be of infinite importance that the poises of the Government should be preserved; that it should confine itself to Federal objects. His object, therefore, was to preserve on that floor the proportionate weight between the several States which the Constitution had fixed.

Had any objection been made to the old Congress under the Confederation, that was federally organized, for the want of talents or integrity? No. The only objection was, that they wanted power. Had the public affairs been conducted with less ability than they are at present? He had neither heard, nor did he believe that they had.

Mr. R. concluded, by making some remarks on the score of convenience, similar to those already stated.

Mr. MITCHILL, in a speech of some length, supported the ratio of thirty thousand.

Mr. S. SMITH felt indifferent whether the ratio of thirty-three, or that of thirty thousand, were adopted; but felt anxious that justice should be done to the State of Maryland. He understood that radical errors existed in the numbers given to that State; that in Harford county there were returned only three thousand slaves, whereas there ought to have been returned eighteen thousand; and that in Cecil there had been returned nine thousand, instead of fifteen thousand. He hoped, in order to have these errors corrected, the Committee would rise, that the original returns in the office of State might be examined.

This motion gave rise to a conversation of some length, in which on one side the impropriety and injustice of making an apportionment under the existing errors, and without the return from Tennessee, were argued; and, on the other side, the great inconvenience of delay, and the inability of the House to obtain a correction of errors, which, if attempted in one instance, might be attempted in many.

Mr. VAN NESS informed the Committee that the return from Tennessee was received at the office of State, and that it made the population of that State amount to ninety-two thousand free inhabitants, and thirteen thousand slaves.

It was ultimately agreed that the Committee rise, report progress, and ask leave to sit again; which was granted.

MONDAY, December 21.

A petition of sundry inhabitants of the town of Alexandria, in the District of Columbia, was presented to the House and read, praying that a law may pass to authorize the Corporation of the said town more effectually to enforce the collection of taxes for corporate purposes.

Also, a petition of sundry inhabitants of the City of Washington, in the said District of Columbia,

H. OF R.

Delegate from Mississippi.

DECEMBER, 1801.

praying that Congress will adopt such regulations for the purchase and sale of victuals and provision, as may tend to establish and support a market in the said city.

Ordered, That the said petitions be referred to the committee appointed on the eighth instant, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, and to report by bill, or otherwise.

Mr. RANDOLPH, from the joint committee appointed, on the seventh instant, to take into consideration a statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same, made a report; which was read, and ordered to lie on the table.

On motion that the House do come to the following resolution:

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be directed to cause to be furnished to each member of the two Houses of Congress, a copy of the laws of the sixth Congress:"

It was resolved in the affirmative.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a report and sundry statements, prepared in pursuance of the act "Supplementary to the act, entitled 'An act to establish the Treasury Department;' which were read, and ordered to be referred to the Committee of Ways and Means.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying two statements, marked (A) and (B) relating to the Internal Revenue of the United States; also, a letter to him from the Commissioner of the Revenue, explanatory thereof; which were read, and referred to the Committee of Ways and Means.

On motion, it was

Resolved, That provision ought to be made by law for extending the privilege of franking to the Delegate, for the time being, from the Mississippi Territory; and for making the same compensation for his travel and attendance, that is allowed the Representatives of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. DAVIS, Mr. TILLINGHAST, and Mr. JOSIAH SMITH, do prepare and bring in the same.

On motion, it was

Ordered, That the Committee of Commerce and Manufactures be authorized to report by bill, or bills, or otherwise, on all such matters as shall from time to time be referred to them by the House.

A petition of Peter Lee, a free negro, was presented to the House and read, praying relief, in consideration of the loss of an eye, and other injuries received, whilst a soldier in the American Army during the Revolutionary war with Great Britain.

A motion being made, and the question put, that the said petition be referred to the Committee of Claims, to examine and report thereon, it passed in the negative.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying two letters from the Commissioners of the City of Washington, and sundry documents exhibiting a state of their receipts and expenditures, and the progress made in the public buildings, from the 18th day of November 1800, to the 18th of November, 1801; which were read and referred to the Committee of Ways and Means.

DELEGATE FROM MISSISSIPPI.

The House resolved itself into a Committee of the whole House on the report of the Committee of Elections, to whom were referred the credentials of Narworthy Hunter, who has appeared as a Delegate from the Territory of the United States known by the name of the Mississippi Territory.

Mr. MILLEDGE spoke forcibly, and with considerable eloquence against agreeing to the report of the committee; he said it was not a matter of private but of general concern—that Georgia had jurisdiction over that Territory; to prove this, he called for the reading of the memorial of Georgia to the Legislature of the Union.

[The memorial was extremely long, and was read but in part.]

Mr. M. insisted on the right of Georgia to the soil; he would assert to that body and to the world that she had never given up that right; and that therefore the laws that had been passed by Congress for the government of that Territory were void, and the gentleman elected as a delegate to Congress by the Legislature of that Territory had no right to a seat in the House. Gentlemen might say what they please of the expediency of Congress making laws for the government of that Territory, yet that expediency must yield to justice and to just claims; depriving Georgia of her command over that soil and over the people of that soil, was a glaring violation of right. Commissioners had been appointed to settle the dispute between the United States and Georgia; those commissioners are here, and probably it will not be long before those claims are adjusted; he hoped and trusted no further proceedings would take place till the dispute was completely settled.

Mr. BAYARD.—The gentleman from Georgia appeared to mistake the object of the report of the select committee; that committee was appointed to examine the credentials of Mr. Hunter, and to see whether the Legislature of the Mississippi Territory had a right, by the law of Congress regulating that government, to send a delegate, to exercise here the right of debating, but not of voting; it was not to admit into the Union a new State, or to erect a new State within the bounds of another. The law of Congress, establishing the government of that Territory, declares that when in that Territory there shall be such a number of inhabitants, they shall have a House of Representatives and a Legislature; and that when their inhabitants shall have increased to such a number, the Legislature may appoint a delegate to Congress, with the right of debating, but not of voting. It is not now a question whether a new State shall be erected, but whether this member be duly cho-

DECEMBER, 1801.

Delegate from Mississippi.

H. OF R.

sen. Nor are the interests of Georgia at all affected: the fifth section of the law establishing this Government expressly declares that nothing in the law for establishing a temporary government there, shall in any manner affect any claims of the State of Georgia to that soil. Commissioners are appointed on the part of the United States and Georgia to settle the dispute between the two Governments; but till, those disputes shall be settled, shall the inhabitants of that Territory be without a government? No sir, it is not a matter of discretion with us; we are bound by a positive law of Congress. If the gentleman was urgent against Mr. HUNTER's taking his seat, the only way to effect it is, by repealing the law of Congress establishing the Government of the Mississippi Territory.

Mr. DAVIS.—The House have no business to meddle, in this case, with the claims of the United States, or of Georgia, to that Territory; we have only to examine the credentials of the member, and to see whether the Legislature, in conformity to the act of Congress, were authorized, or not, to send a delegate. If that act of Congress be unconstitutional, it must be repealed by the Senate and House; yet, as it now is, we are bound to but one decision on this subject.

Mr. RANDOLPH.—He thought gentlemen did not treat the member from Georgia with due candor and respect. It should be remembered that Georgia had ever protested against the laws relative to the Mississippi Territory. It was the duty of that gentleman, as a member from the State of Georgia, to dissent; constructions might be put on silence. The United States had arrogated the power of governing that Territory, at the same time saying that such assumption of power should not affect any claims of Georgia; but did not this very assumption of a right to govern, prejudge claims? We are told the commissioners are on the eve of settling the dispute; let us wait till this be accomplished. Mr. R. motioned that the committee rise.

Mr. CLAIBORNE.—He thought it right in the gentleman from Georgia to dissent; it was to be expected; he did not rise to censure him. He did not conceive that any gentleman in the House wished, in this matter, to do anything that would prejudice the interest or claims of Georgia. The assumption of a power to give laws to the Mississippi Territory arose from the necessity of the thing, and from benevolence to the inhabitants; he would not suffer an infraction of the Constitution for the world; no, not to save a world. [The Chairman called him to order: the question was now on the Committee's rising.] Mr. C. said he did not know but he might be out of order, but if he was, he believed others had been in the same situation. He wished to express his opinions on the subject in common with others. It should be considered that the delegate from the Mississippi Territory would have no right to vote, but only to debate; he would be only a sting, but without poison. We ought, moreover, to oblige our brethren of that southern hemisphere; we ought to hear their statements, attend to their wants, &c.

Mr. DANA.—He was for the Committee's rising. It had been usual to suffer the reports of the Committee of Elections to lie on the table, and if no protest or complaint were entered, nothing further was done with them, and the members kept their seats. In the case of the Northwestern and Indiana Territories, they were obliged to inquire, if it was the first time, whether there was a right to send a delegate; such is the situation now of the member from the Mississippi Territory; the records show their right to send, the report states that this delegate is duly chosen. Let the report lie on the table, and the member keep his seat.

Mr. GRISWOLD.—He was not in favor of the Committee's rising. It was extremely unpleasant to the delegate from the Mississippi Territory to remain in this situation; he himself claimed a seat in that House, not as a matter of favor but of right; and this House had not the power of depriving him of this right, without repealing the act of Congress establishing a government over that Territory. Some gentlemen have said that the rights of Georgia will be affected by the admittance of this member to a seat; such certainly could not be the case; if the claims of Georgia are at all affected, it is done already by act of Congress; yet, for his part, he did not consider the claims of Georgia as affected or injured. Nor ought we to wait the decision of the commissioners: that decision may take place in a month, and perhaps will not these six months.

Mr. MACON.—There ought to be some petition or statement of facts presented by the member from Georgia, or some other person, to justify a discussion at this time, or to prevent the delegate from taking his seat. He wished his right and his credentials treated as those of any other member. He agreed with the gentlemen from Connecticut, (Mr. DANA,) that it were better for the committee to rise, without leave to sit again; the member would then be entitled to his seat and his pay, till it should be shown that he has no claim to them.

Mr. BAYARD.—He did not agree with the Speaker; the face of the report of the select committee gives sufficient cause for a decision of the Committee of the Whole. The gentleman from Georgia opposes the decision of the select committee; and it is due to the member from Georgia, and to the delegate, to have the opinion of the House—to have a prompt decision. The mere question is, whether he has been duly elected; not whether the Legislature of the Mississippi Territory had a right to elect him. Gentlemen have said we are prejudicing the claims of Georgia, that their rights are implicated in this step; they have said that the act of Congress establishing a government was an assumption of power; not so: by the Spanish Treaty that Territory was ceded to the United States; the inhabitants were without a government; they petitioned Congress for some form of government. What was to be done? The interposition of Congress arose *ex necessitate rei*: It was no assumption of power or assertion of claims. It was a necessary establishment of a temporary government, to continue while there was necessity. He was for an immediate decision.

MESSRS. RANDOLPH, DAVIS, BAYARD, S. SMITH, MACON, and GRISWOLD, continued the debate.

The report of the select committee was agreed to. Mr. MILLEDGE wished the yeas and nays, even if he stood alone. They were taken, and stood, yeas 77, nays 8, as follows:

YEAS—Willis Alston, James A. Bayard, Phaniel Bishop, Thomas Boude, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hodge, David Holmes, Benjamin Huger, George Jackson, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, James Mott, Thomas Moore, Samuel L. Mitchell, Anthony New, Thomas Newton, jr., Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, William Shepard, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, John Stanley, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., Benjamin Taliaferro, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horn, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—John Bacon, Samuel J. Cabell, William Eustis, Michael Leib, John Milledge, John Randolph jr., John Smilie, and Richard Stanford.

Ordered, That the residue of the said report of the Committee of the whole House do lie on the table.

TUESDAY, December 22.

Another member, to wit: JOHN RUTLEDGE, from South Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamped duties on debentures;" which was read twice and committed to a Committee of the whole House on Monday, the fourth day of January next.

Mr. DAVIS, from the committee appointed yesterday, presented a bill to extend the privilege of franking letters to the Delegate from the Mississippi Territory, and making provision for his compensation; which was read twice, and ordered to be engrossed, and read the third time to-day.

Ordered, That Mr. GREGG be added to the committee, appointed on the eighth instant, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, in the room of Mr. SUMTER, elected a Senator of the United States for the State of South Carolina.

A Message was received from the President of

the United States, by Mr. Lewis, his Secretary, transmitting certain documents supplemental to those already transmitted; and informing the House that two other documents, viz: one respecting the Barbary Powers, and the other exhibiting a view of the officers of the Government of the United States would be transmitted as soon as prepared.

The documents received were: 1. The Census of Tennessee. 2. A letter from Mr. Humphreys respecting Algiers. 3. Extract of a letter from Commodore Dale to the Secretary of the Navy. 4. Extracts of letters from Capt. Sterret. 5. Letters from the Bashaw of Tunis, dated April 15, 1801, and the answer of the President, dated September 9, 1801.

Ordered to be printed

Such papers as respected the Barbary Powers were referred to the committee already appointed on that subject; and the Census of Tennessee was referred to the Committee on the Apportionment bill.

Mr. SMITH called up the resolution, yesterday made by him, for the adjournment of the two Houses from the 26th inst., to the 2d of January.

On which, the question being taken, it was lost—ayes, 23.

An engrossed bill to extend the privilege of franking letters to the Delegate from the Mississippi Territory, and making provision for his compensation, was read the third time and passed.

A Message from the Senate informed the House that the Senate have agreed to several resolutions, in the form of joint resolutions of the two Houses, "making provision for the disposition and arrangement of the books and maps purchased, pursuant to law, for a Congressional Library;" to which they desire the concurrence of this House.

The said resolutions were read, and ordered to be committed to a Committee of the whole House to-morrow.

MILITARY PEACE ESTABLISHMENT.

The House according to the standing order of the day, resolved itself into a Committee of the whole House on the state of the Union.

Mr. S. SMITH made the following motion:

Resolved, That it is expedient to fix the Military Peace Establishment."

The motion was opposed by several members as unseasonable. The President in his Message had informed Congress that the Secretary at War would lay before them a statement of the military force of the United States, and of the posts and fortifications requiring protection. Until this information was received, it was thought premature in the House to come to any decision.

After a conversation of some length, Mr. SMITH withdrew his motion.

Mr. GREGG then moved three resolutions.

The first was amended, and agreed to. It was, in substance: That it is expedient that the law for regulating the militia of the United States be revised and amended. This was afterwards confirmed in the House, and a committee of nine appointed.

DECEMBER, 1801.

Library of Congress.

H. OF R.

The second was for the appointment of a committee to inquire whether any, and what, additions are necessary to be made to the military stores of the United States.

The third was for the appointment of a committee to inquire whether any, and what, amendments are necessary to be made in the laws respecting the fortifications of the harbors of the United States.

These two resolutions were agreed to by the Committee, and reported to the House, who postponed the consideration of them till Monday, for the purpose of gaining the information promised on this subject in the President's Message.

Mr. RANDOLPH then moved that the Secretary of War be directed to lay before the House a statement of the present Military Establishment, together with an estimate of all the posts and stations where garrisons will be expedient, and of the number of men requisite for each garrison.

Agreed to.

WEDNESDAY, December 23.

The SPEAKER laid before the House a plan of the lands of the United State within the boundary line northwest of the river Ohio, transmitted by the Secretary of the Treasury, as referred to in his report respecting the public debt and finances of the United States, received on the twenty-first instant: Whereupon,

Ordered, That the said plan be referred to the Committee of Ways and Means.

A petition was read from sundry inhabitants of the District of Columbia, praying the aid and patronage of Congress in the establishment of a company for building a bridge over the Potomac.

Referred to the Committee on the Territory.

A Message was received from the President, transmitting a more correct return of the Census of Maryland, just received from the Marshal, than that before presented.

On motion, it was *Ordered*, That the copy of the act of the British Parliament, entitled "An act for carrying into execution the Treaty of Amity, Commerce, and Navigation, concluded between His Majesty and the United States of America," heretofore transmitted to this House by the Secretary of State, be printed for the use of the members of both Houses.

LIBRARY OF CONGRESS.

In Committee of the Whole, the resolutions of the Senate relative to books, maps, &c., were considered. The third resolution was amended so as to give the right of taking books from the Congressional Library to the Attorney General, the Judges of the Supreme Court, while that court is in session, and to foreign Ministers.

On the fifth resolution, that of appropriating one thousand dollars annually for the increase of the library, some debate took place.

Mr. BAYARD advocated the appropriation, should it extend to ten or twenty years.

Mr. VARNUM thought the mode of appropriating money by resolution simply, improper; he thought a law ought to be passed.

Mr. BAYARD removed those objections by saying, that that would be done when the resolutions came before the House.

Mr. MACON thought the time of the appropriation ought to be limited.

Mr. LOWNDES moved to strike out the word "annually." Agreed to.

Mr. BAYARD, in considering the resolutions of the Committee of the Whole, was for striking out the words "Secretary of the Senate and Clerk of the House," supposing a Librarian ought to be appointed by the President.

When the subject was under discussion before the House, Mr. B. advocated the annual appropriation of one thousand dollars for ten years. He thought such measure advisable in preference to expending that sum at once, as there are continually new books, maps, &c., published, and there was the greater probability of being able to procure the most valuable publications.

Mr. RANDOLPH talked much of old practices; practices of expending unnecessarily, &c.; he said that expectation was on tiptoe to see the new practices, the practices of saving. For his part he was unwilling to expend the public money, except in cases of absolute necessity.

Mr. BACON, on mere principles of economy, would leave it indefinite, and a succeeding Congress might diminish or add to the sum to be annually expended for the library, as they pleased. He had not made a calculation, but he believed the House expended as much in deliberating as the sum about which they were contending would amount to.

Mr. GODDARD, of Connecticut, spoke in favor of one thousand dollars annually.

Mr. ELMER spoke against it.

Mr. BAYARD said, in reply to Mr. RANDOLPH, as the gentleman had talked so much of the disposition of the House heretofore to expend unnecessarily public money, he wished he would specify to what measures he alluded. It had been common to make such charges generally; he believed few dared specify. For his part he believed he was anxious as any one to hold fast and tight the purse-strings of the public. He would be as willing to curtail Executive power as any one: but if the gentleman's principles are carried to their extent, they should indeed spend but little. It had been said, we were the most enlightened people on earth; if that be not altogether true, let us make it as much so as possible.

Mr. BACON was in favor of ten thousand dollars annually. He thought it a moderate sum and a necessary appropriation.

It was carried in favor of one thousand dollars, but only for one year.

Mr. BAYARD moved that, instead of the Secretary of the Senate and the Clerk of the House, a Librarian be appointed by the President; which proposition, after some debate, was not carried.

THURSDAY, December 24.

The SPEAKER laid before the House a letter and report from the Postmaster General, accompany-

H. OF R.

Library of Congress.

DECEMBER, 1801.

ing a list of post roads which have not produced one-third of the expense of carrying the mail on the same, after having been established for two years, transmitted in pursuance of the "Act to establish the Post Office of the United States;" which were read, and ordered to be referred to the committee appointed, on the tenth instant, to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States.

On motion, it was *Resolved*, That the Secretary of State be directed to lay before this House a table showing the comparative duties paid, in the ports of Great Britain, on goods imported into Great Britain in American, foreign, and British bottoms, since the fifth of January, one thousand seven hundred and ninety-eight, so far as the same respects the commerce of the United States.

The SPEAKER laid before the House a letter from the Secretary of War, accompanying a statement of the present Military Establishment of the United States, marked [A], and an estimate of all the posts and stations for which garrisons will be expedient, and of the number of men requisite, in his opinion, for each garrison, marked [B]; transmitted in pursuance of a resolution of this House of the twenty-second instant; which were read, and ordered to be referred to the Committee of the whole House on the state of the Union.

On motion, it was *Resolved*, That the Secretary of State be directed to lay before this House the laws of the Northwestern and Indiana Territories, imposing taxes on the lands of non-residents.

On a motion made and seconded, it was

Ordered, That the order of the day for the House to resolve itself into a Committee of the whole House on the bill for the apportionment of Representatives among the several States, according to the second enumeration, be postponed until Monday, the fourth day of January next.

The House adjourned to Monday.

MONDAY, December 28.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying his report on the memorial of Philip Sloan, referred to him by order of the House, on the fourteenth instant; which were read, and referred to a Committee of the Whole House on Wednesday next.

TUESDAY, December 29.

A petition of sundry citizens of the United States, resident in the Territory of Columbia, was presented to the House and read, praying that a bridge may be erected from the western and southern extremity of the Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the river Potomac.—Referred to the committee appointed on the eighth instant, to inquire whether any, and if any, what alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Mr. VARNUM, from the committee appointed, on the seventh instant, to prepare and report such

standing rules and orders as are proper to be observed in this House, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. DAVENPORT, from the Committee of Revision and Unfinished Business, to whom it was referred, to examine and report such laws of the United States as have expired, or are near expiring, made a report, in part; which was read, and ordered to lie on the table.

Mr. RANDOLPH, from the committee on the resolutions of the Senate, on the subject of a Congressional library, begged leave to report by bill, which, being granted, he reported a resolution, "that the House disagree to the said resolutions." The House concurred.

Mr. RANDOLPH moved the following resolution:

"Resolved, That it is expedient to reduce the Military Establishment of the United States."

It was not the wish of Mr. RANDOLPH to precipitate a decision on this important subject. He, therefore, was willing that his resolution should lie for consideration at some future day.

Ordered, That it do lie on the table.

LIBRARY OF CONGRESS.

Mr. RANDOLPH reported a "bill concerning the library for the use of both Houses of Congress;" which, after being twice read, was committed to a Committee of the whole House: Mr. RUTLEDGE in the Chair.

The bill provided that the members of both Houses, the President and Vice President of the United States, and the Judges of the Supreme Court, should have liberty to take any book from the library to read.

Mr. SPRIGG moved, to add the Judges of the District of Columbia. He was supported in argument by Mr. DENNIS, upon the ground of the importance of the causes which this especial district would present, and the great expense and extreme scarcity of some most valuable and necessary law books.

Mr. BAYARD objected to the motion, because he could discover no reason for distinguishing the judges of the district from others; but Judges of the Supreme Court being far from their libraries, required such references. He hoped the Congressional Library would never be subjected to the abuse which books used in courts of justice were too liable to.

The motion was not agreed to.

Some observations were made as to the time which the library was to remain open.

Mr. GRISWOLD moved to confine it to the time of the session of Congress.

It was carried, with an exception moved by Mr. SOUTHARD, in favor of the Judges of the Supreme Court, whose sessions do not accord with those of Congress.

A blank was left as to the sum to be appropriated, in addition to the remaining part of the five thousand dollars heretofore appropriated, for the purchase of books.

On the Chairman's asking the sum with which to fill the blank, Mr. RANDOLPH moved to strike

DECEMBER, 1801.

Internal Taxes.

H. OF R.

out the sections, observing that, of that sum, not more than \$2,200 had been used, and \$2,800 remained unexpended. He entertained no doubt but Congress would aid the institution by every timely grant.

It was stricken out. The bill was postponed till to-morrow.

The several sections of the bill prescribe—

1. That the library, consisting of all the books of the two Houses, be kept in the room, last session, occupied by the House of Representatives.

2 and 3. That the President of the Senate and the Speaker of the House of Representatives appoint a librarian; and that the President and Speaker have the superintendence of the library, subject to the provisions of the act. The librarian to be allowed two dollars a day.

4. No map to be taken out of the library; and the books to be taken out by the President and Vice President of the United States, and the members of the two Houses, by the Heads of Departments and Attorney General, during the sitting of the Legislature, and by the Judges of the Supreme Court, during its sittings.

The unexpended balance of sums heretofore appropriated, viz., \$2,800, to be applied to the purchase of books, under the direction of a joint committee of three members of each House.

The House then resolved itself into a Committee of the whole House, on the said report and bill; and, after some time spent therein, the SPEAKER resumed the Chair, and Mr. RUTLEDGE reported that the committee had had the said report and bill under consideration, and directed him to report to the House their agreement to the resolution contained in the report, and several amendments to the bill.

WEDNESDAY, December 30.

A petition of Elias B. Caldwell, clerk of the Supreme Court of the United States, was presented to the House and read, stating the insufficiency of the fees and other emoluments allowed him by law, and praying that the same may be increased, and rendered more adequate to his services; also, that provision may be made, by law, for the safe-keeping of the books and records of the said Court.—Referred to Mr. DENNIS, Mr. THOMAS, and Mr. BISHOP; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. DAVIS, from the committee appointed on the 14th instant, to inquire into the expediency of giving further time to persons entitled to military land warrants, to obtain and locate the same; and, also, to report what provision ought to be made by law to authorize the Secretary of War to issue military land warrants, and duplicates of the same, where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud, made a report, in part; which was read, and ordered to lie on the table.

The House took up the Library bill, when Mr. RANDOLPH moved to strike out that part which gave permission to the Heads of Departments,

7th CON.—12

Judges of the Supreme Court, and foreign Ministers, to take out books; which was agreed to, and the bill was ordered to be engrossed for a third reading to-day.

On motion of Mr. RANDOLPH, the House went into Committee of the Whole on the state of the Union; when Mr. Randolph submitted his motion of yesterday, viz: "that it is expedient to reduce the Military Establishment of the United States." He made the motion in Committee of the Whole as it appeared to be more consonant to the proceedings of the House.

The resolution was agreed to without a division, and reported to the House, who concurred, and appointed a committee of five to bring in a bill.

THURSDAY, December 31.

An engrossed bill concerning the library for the use of both Houses of Congress was read the third time, and passed.

Resolved, That the said bill do pass, and that the title be, "An act concerning the library for the use of both Houses of Congress."

A message was received from the Senate, offering, for the concurrence of the House, resolutions, approving the gallant conduct of Captain Sterret and his crew in the capture of a Tripolitan corsair of superior force; requesting the President to present Captain Sterret with a gold medal with suitable emblems; and to present the other commissioned officers with swords; with a concluding resolution, that the non-commissioned officers and crew receive an extra month's pay.

Ordered, To lie for consideration till Monday.

INTERNAL TAXES.

Mr. DAVIS moved the appointment of a committee to inquire into the expediency of repealing the acts imposing duties on stills and distilled spirits, on refined sugars, on sales at auction, and on pleasure carriages.

Mr. DAVIS said his object, in making this motion, was, that the House should accomplish that directly, which had been this session attempted in so circuitous a way as to embarrass and delay its proceedings. He saw no reason for going into a Committee of the Whole, in order to arrive at decisions that might better be made directly by the House itself.

On this motion a debate of considerable length ensued, in which, on the one side, the reference to a select committee, and, on the other, a reference to a Committee of the whole House was advocated. No decision was had, and of course the motion of Mr. D. was ordered to lie on the table.

Mr. MITCHILL observed, that it was contemplated, in the President's Message, that it would be necessary to appropriate an annual sum for Naval purposes. It appeared, also, from the Message, that some doubt was entertained by the Executive of the competency of his power to employ superintendents, and to fix navy yards. He mentioned these circumstances with the view of offering a resolution that a committee may be formed

on the subject, who should inquire into the expediency of applying to naval purposes the proceeds of the sales of public vessels.

On the suggestion of the SPEAKER, Mr. MITCHILL moved the going into a Committee of the Whole on the state of the Union, in which he would make his proposed motion.

On this motion, a debate of considerable length ensued, in which Mr. DAVIS declared that he thought this the fit time to determine the propriety of that circuitous mode of procedure, which had been practised this session.

Mr. DAVIS, for reasons which he assigned at length, in which Mr. EUSTIS fully concurred, supported the propriety of a reference in the first instance to a select committee.

MESSRS. GRISWOLD, RUTLEDGE, BAYARD, RANDOLPH, and DANA, supported a reference to a Committee of the Whole.

The House decided in favor of going into a Committee of the Whole; when

Mr. MITCHILL moved, that so much of the President's Message as relates to naval preparations and to the establishment of sites for naval purposes, be referred to a select committee, which was agreed to in Committee, confirmed in the House, and a committee of five appointed.

Mr. BAYARD, during the course of the debate—in allusion to the adoption yesterday of the resolution of Mr. RANDOLPH for reducing the Military Establishment, which he thought premature, not considering the House as sufficiently acquainted with the details of the subject to act upon it—said, that if gentlemen were for reducing the Army in whatever degree, or for abandoning it altogether, he should go with them. He would, on such occasion, be governed by the same principles which had hitherto guided him. He had heretofore been disposed to repose a liberal confidence in the Executive of the United States; and when an increase of our military force had been recommended by the President, he had invariably been for it; much more would he be disposed, when a reduction was recommended from the same quarter to sanction it by his vote. With the Executive rested the responsibility of the exterior defence of the nation; and if the Executive was of opinion that the nation was secure with a force of three, two, or one thousand, or without even a single man, he would concur with him in giving effect to such a conviction.

Mr. RANDOLPH was called up by these remarks. He had little thought that his motion, agreed to yesterday *sub silentio*, and without the least hesitation, would have been made the topic of such animated animadversion as he had heard to-day. He would tell the gentleman from Delaware, that his motion had neither been immature in substance, nor premature as to time. It would be recollected, that previous to its adoption, the Secretary of War had been called upon to furnish information to the House. He had furnished information, to his mind completely satisfactory. He had stated the establishment to be five thousand men; and his opinion that all the garrisons required only three thousand men. Could it, then, with

any reason be called premature to act upon such information? If the gentleman from Delaware, or other gentlemen thought so, why not combat a decision at the time? Did they imagine that, without the expression of a murmur by them, the mover would himself rise and oppose his own motion?

As to the delay which had been noticed, as having taken place in the transaction of business, it was not to be ascribed to any particular mode of procedure; but to the unusual languor of the season; to the absence of several members of great weight; to the augmentation of new members not yet fully acquainted with the forms of business, and to the unusual mass of information presented to the House, which enlarged the field of action, and to the delays of printing arising from the unusual quantity of matter submitted.

INTERNAL TAXES.

Mr. BAYARD moved that the House resolve itself into a Committee of the Whole on the state of the Union, for the purpose of enabling him to offer a resolution to the following effect:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of repealing the laws laying duties on stills and distilled spirits, on refined sugar, on sales at auction, on pleasurable carriages, on stamps, and on postage of letters."

Mr. BAYARD made this motion for the purpose of placing the important subject contemplated by it in a train for decision. He thought it full time to commence our proceedings on it; and in his opinion, it was fit that the consideration of the subject, generally, should go before the Committee of Ways and Means. The subject was so important as to strike at the vital principles of our revenue. The repeal of the internal taxes involved a reduction of six hundred thousand dollars in our receipts. The propriety of such a reduction did not constitute a distinct subject for consideration, but depended upon the deductions made on a comprehensive view of our finances, which could only be taken by the Committee of Ways and Means, to whom was committed generally whatever regarded revenue.

If the minds of gentlemen, said Mr. B., were made up to abolish all the internal taxes, it must be to them perfectly immaterial to what committee a reference was made. He knew the flattering prospects held out by the President, and he hoped they would all be verified. But his own mind was not made up, nor did he know that the minds of other gentlemen were made up on the propriety of dispensing with these taxes. He was led to this inference by observing no official notice to such effect in the communications made by the Secretary of the Treasury. On the contrary, the Secretary had so made his calculations, predicated as they were upon the continuance of these taxes, that his calculations would be greatly deranged by dispensing with them. Mr. B. knew not that we were prepared to leap this precipice. If the public burdens could be reduced, he would be delighted with the act of reduction. Yet still, if the sum of six hundred thousand dollars, derived

DECEMBER, 1801.

Internal Taxes.

H. OF R.

from these taxes, could be dispensed with, doubts might be entertained whether the internal taxes were those which should be first either reduced or abolished. He held it to be a correct principle, that taxation should be equal, and that no one class of citizens should be burdened to the exemption of all other classes. From a slight consideration of the subject, he had found no other way of enabling our brethren to the westward to participate in the public burdens than by affording them an opportunity of paying their portion of internal revenue. It might appear, on investigation, that more substantial relief would be afforded to the various descriptions of our citizens, by continuing the internal taxes; and reducing those on imports; and if it should be thought proper to diminish the burden imposed on our Western citizens, he would ask whether that effect would not be more substantially accomplished by reducing the tax upon salt? It would be recollected that great opposition had been made to the imposition of this tax, which had been denominated oppressive, as it fell upon an article of necessity.

Attention ought, also, to be paid to the liability of several articles to be smuggled, the only mode of preventing which was well known to be a reduction of the duties.

Mr. B. stated these circumstances, not as evidences of having matured his own ideas; but to show the necessity of referring the subject to a committee, whose special duty it was to take a general view of the resources and expenses of the nation, and who, therefore, in the present stage of the session, were alone in a situation to make the requisite inquiry.

Mr. EUSTIS said that the reasons offered by the gentleman from Delaware were with him conclusive that this was not the proper time for considering the subject. Until we know the reductions in the expenditures of the Government that are to be made, it is impossible that we can say how far it will be expedient to reduce or abolish our taxes. We had not determined to what extent the Army or the Navy should be reduced, nor had we come to any ultimate decision on any reduction whatever. For these reasons he must oppose a decision at this time upon the subject, whether that decision was in this or any other shape.

Mr. BACON concurred with Mr. EUSTIS in considering any decision as at present premature.

Mr. RUTLEDGE viewed the subject as of great importance. He could not figure to his imagination one likely to occur this session of equal importance. The President contemplated a repeal of all the internal revenues, and the imposition of all taxes upon imported articles. The Secretary of the Treasury appears, by implication, to be of a different opinion, and contemplates a continuance of these duties. What is the object of the gentleman from Delaware? Why delay; time for consideration, by reference of the subject to a committee most competent to inquire? As to the public burdens, every member on the floor had a common feeling. We do not wish to lay unnecessary taxes. But when taxes are laid, when they are uncomplained of, it was indeed deeply inter-

esting without consideration to decide on their abolition. Mr. R. said, for himself, he should be embarrassed by being forced into an immediate decision. We want information before we are called upon to decide. The motion seeks that information. It sends the business to the Committee of Ways and Means, to whom it belongs of right. It is their duty to consider it, for whatever relates to revenue must go to them. Gentlemen cannot say that they are surprised. By the resolution, they are not called upon to decide upon the subject; they are only called upon to place it in a train for decision.

Mr. MACON hoped the business would be taken up, and the sooner it was done the better. It was certainly of great importance, and the earlier the House proceeded to consider it, the sooner would they be prepared for deciding upon it. If the vote of reference was final, the arguments of the gentleman from Massachusetts would apply. But this was not the case.

It had been said that the President had declared his opinion that we can dispense with these taxes. The statement was not correct. His opinion was contingent. He had said, we may dispense with these taxes in case we proportionably reduce the expenses.

As to the remarks made respecting the different opinions of the President and Secretary of the Treasury, they likewise were erroneous. Distinct views were taken by each. The President, contemplating a reduction in the expenses, intimates the expediency of repealing the internal taxes; whereas the Secretary of the Treasury, taking things as they are, states the effects of their continuance. From these circumstances, no diversity of opinion could be inferred.

Mr. M. concluded by expressing a hope that the expenses of the Government would be reduced, that the internal taxes would be taken off, and that immediate measures would be pursued for preparing the House for a final decision.

Mr. EUSTIS was alike hostile to the present motion and to that which had been made by the gentleman from Kentucky, who had yesterday introduced the subject. He had heard the motion with a sensation of uncommon surprise; for he was of opinion that the public attention should not be attracted; or the public sensation excited, till we should be able to determine the course proper to be pursued. He felt himself unprepared to decide, and believed other gentlemen were equally unprepared. He hoped that he cherished a suitable respect for the President of the United States, though he did not know that he would go so far as the gentleman from Delaware, and disband a whole army at his word.

The wisest course was to wait until information was obtained. This would in fact be gaining time. If the Committee of Ways and Means were to consider the subject, it must be under the present state of things. They could not take for granted what might or might not be done by Congress; and before Congress could decide, they must have information which they do not yet possess. He who, under present circumstances, attempted

to say to what length our retrenchments would go, and what taxes we could spare, might indeed be called a prophet.

We ought not, said Mr. E., to stir the public sensibility improperly or prematurely. By exciting that sensibility before we had determined how to act in future, impressions may be raised which we shall not be able to satisfy.

Mr. SMILIE concurred in opinion with Mr. E., and moved, as the best mode of disposing of the subject, that the Committee rise.

Mr. GRISWOLD declared himself against delay. He knew not why the House were not prepared to decide immediately. The President had introduced the subject, and if any sensibility had been excited, it must be ascribed to him, and not to us. Nor did he think that any ill effects would flow from attracting the public attention. The President did not know, when he addressed us, that we would be for a reduction of the expenses; yet, thinking as he did, it was highly proper in him to give his opinion to the House. So proposed to us, it would exhibit a want of respect to that Magistrate not to take it up immediately. Not to act upon it promptly would be subversive of the national tranquillity after the attention of the public had been directed to it.

Mr. SMILIE had thought the gentleman from Connecticut was too well acquainted with the proceedings of that House to say that the Committee of Ways and Means were prepared to act upon this subject. Did they know how far we would reduce the Army, the Navy, or the Judiciary?

Mr. VARNUM hoped the Committee would rise. Any disposition of the subject was at present premature. As to the calculations of the Secretary, alluded to, they were made from the existing revenue, and all his deductions were made therefrom. The President had taken another view of the subject. Contemplating the probability of a reduction in our expenses, he had stated that, in such event, we could dispense with the internal taxes. But whether the contemplated reduction could be made, the House were not prepared to say. Of one thing he was sure, that not a single necessary tax would be abandoned.

Mr. DANA said, that more than three weeks have elapsed since the President's communication has been laid before us, and, during that time, a sense of decorum has not induced us to take up one of the most important parts of it. He certainly agreed with gentlemen that we ought to take up the subject and decide for ourselves. If we concur with the President, we shall repeal the laws; if we do not concur, we may, it is true, risk our popularity by opposing so favorite a measure with the people. But, placed as we shall be between popularity on the one hand, and duty on the other, as honest men we should do our duty. But certainly it is our duty now to examine the subject. Grant that the reduction in our expenses may extend to a million, though scarcely half that sum could be hoped for; still the question remains what taxes shall be diminished. He could not, for his part, feel all that horror of public sensi-

bility that had been portrayed by the gentleman from Massachusetts. What have we to fear, suppose we interfere with that sensibility? If we do so in the discharge of our duty, he was perfectly willing it should be excited; nay, it would be useful to the people themselves.

Mr. EUSTIS was perfectly ready to meet the public sensibility, whether for or against us. We had already tried it both ways. He was much pleased with the respect professed by gentlemen for the public sensibility, and also for the communications of the President. But there were parts of those communications, which, notwithstanding the impatience of gentlemen, they would not be displeased at laying unacted upon, not merely three weeks, but three months.

Mr. BAYARD did not expect an opposition to his motion from the quarter from which it came; for he had a right to expect as much deference to the President from the opposite, as from his own side. For his part he felt no terrors at meeting the whole, or any part of the President's communications. Whatever he recommended that was right, he would vote for, and whatever was wrong, he would oppose. Though his former habits had led him to cherish a respect for the President, of which he did not repent, yet he felt no servility that would lead him to repress an expression of his sentiments.

A gentleman from Pennsylvania had talked about reducing the Army, the Navy, and the Judiciary. But there were other expenses which the gentleman might have dwelt on. Why silent on the Legislature? Let us reduce the length of our sessions. It did not appear consistent in that gentleman to strike at the Judiciary, and other departments, and leave untouched whatever affected himself.

Mr. RANDOLPH did not desire to occupy much of the time of the Committee, as he thought it immaterial whether the Committee rise or not. But he wished, for the information, and perhaps for the satisfaction, of the gentleman from Massachusetts, to state that, among other members, he was one who had not decided whether Government could dispense with the internal taxes. He hoped, and was inclined to believe, that they might be dispensed with. The Secretary of the Treasury had expressly stated that part of his report was speculative, viz: that part which inferred the effects of peace. The correctness of the opinion of the Secretary on this point must decide the House as to the propriety of giving up these taxes. He was one who, though he did not think a state of peace would materially affect the revenue, had not decided whether a reduction of the public impositions in this or that species of revenue should be made. He noticed these things, to prevent an impression being made on the public mind that the House were for precipitating a decision. As to the public sensation, he felt no alarm. He knew that our measures must depend upon the reductions we shall make.

Mr. R., for these reasons, was against any decision now; and had the gentleman from Kentucky pressed his motion yesterday, he was prepared to

JANUARY, 1802.

Judiciary System.

H. OF R.

move a postponement of it. In the mean time, there were other important topics involved in the Message that might be referred and acted upon.

Mr. DANA presumed that the honorable gentleman from Massachusetts had done him the honor of alluding to him in his remarks. He was not very solicitous that the subject should be inquired into, but since it was brought up, he must say that nothing short of the talents of the honorable gentleman could furnish a semblance of reason for not going immediately into the inquiry. That gentleman errs egregiously if he imagines that I can dread an investigation of any point involved in the President's Message. He would add, that whatever his particular opinion might be of the person to whom had been confided the Government of the nation, it became him only to see in him the First Magistrate of the country, and to treat him with correspondent respect, and to see in what he did, not the man, but the measure.

The question was then taken on the Committee rising, and lost—yeas 29, nays 48.

The reference to the Committee of Ways and Means was then carried, both in Committee and in the House, without a division.

The House adjourned till Monday.

MONDAY, January 4, 1802.

WILLIAM BARRY GROVE, from North Carolina, appeared, produced his credentials, and took his seat in the House.

Ordered, That Mr. MILLEDGE be appointed to the Committee of Ways and Means, in the room of Mr. DICKSON, who is sick and unable to attend.

Petitions of sundry aliens residing in the county of Lancaster, in the State of Pennsylvania, were presented to the House and read, respectively praying a modification or repeal of the act of Congress, passed the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend, the act, entitled "An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on that subject."—Referred to the committee appointed, on the fifteenth ultimo, to prepare and bring in a bill or bills for a revision and amendment of the laws respecting naturalization.

The SPEAKER laid before the House a letter from the Secretary of the Navy, enclosing a report from the Commissioners appointed under the act, entitled "An act for the better government of the Navy of the United States," passed the twenty-third of April, one thousand eight hundred, relative to the proceedings of the Board since their last report, dated the twenty-ninth of November, one thousand eight hundred; which were read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from Samuel Dexter, late Secretary of War, praying to be indemnified in the case of a suit now pending against him in the capacity aforesaid, in the court of the United States for the District of Columbia, on account of a contract entered into with a certain Joseph Hodgson, in behalf of the United States, for the rent of a house in the City

of Washington, as a War Office, in the year one thousand eight hundred, and which, whilst occupied as aforesaid, was consumed by fire.

Ordered, That the said letter be referred to Mr. GRISWOLD, Mr. HANNA, Mr. DENNIS, Mr. EUSTIS, and Mr. NICHOLSON, to examine and report their opinion thereupon to the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his report on the memorial of John Hobby, late Marshal of the District of Maine, referred to him by order of the House, on the fourteenth ultimo; which were read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting an account of the receipts and expenditures of the United States for the year one thousand seven hundred and ninety-nine; also, tables exhibiting the accounts of the collectors and supervisors of the revenue for the same year; which were read and ordered to lie on the table.

JUDICIARY SYSTEM.

Mr. RANDOLPH moved that the House should go into a Committee of the Whole on the state of the Union, with the view of submitting three resolutions to the Committee, viz:

"*Resolved*, That it is expedient to inquire whether any, and what, alterations should be made in the Judicial Establishment of the United States.

"*Resolved*, That provision ought to be made for the impartial selection of juries.

"*Resolved*, That it is expedient to inquire whether any, and what, reductions can be made in the civil expenses of the Government of the United States."

The House accordingly went into Committee.

Mr. BAYARD presumed an agreement to these resolutions would, in their present shape, meet with no opposition. It was impossible to determine what shape they would ultimately assume. The Judiciary system was doubtless susceptible of amendment, and if any proper amendments should be proposed, he would concur in their adoption. With respect to the second resolution, though he did not know that there was any necessity for altering the mode at present practised of selecting juries, not having heard of any complaints under it, yet, as the resolution only led to an inquiry into the subject, he would not object.

With regard to the last resolution, it was one in which we must all concur. The object, if attainable, would be extremely grateful to all of us.

The three resolutions were agreed to without a division. The Committee then rose, and reported them to the House.

On the report being taken up, Mr. RANDOLPH moved that the consideration of the two first resolutions be postponed till the third Monday of January.

Mr. BAYARD hoped the motion for postponement would not prevail. The propositions were abstract ones, leading to inquiry, and the sooner they were acted upon the better. The mode pursued by the gentlemen from Virginia, if his simple object was to give notice, was the least happy that he could

have devised, for it gave to gentlemen no opportunity to prepare themselves, as they were totally unacquainted, in the present stage of the business, as to what would be the alterations proposed. If a committee were now appointed, they would have time to deliberate on a subject of the utmost importance—one so complicated as to require great attention. When their report was made, he would be one of those who would ask from the candor of the House time to consider it.

Mr. RANDOLPH said, he was at all times willing to accommodate gentlemen of every political description on proper occasions. Apprehending that his resolutions, if taken up in the House, would give rise to discussion, he had moved for their postponement, from a wish not to interfere with the desire of the gentleman from Pennsylvania, and other gentlemen, to act on the apportionment bill. As his motion for postponement appeared likely to be itself productive of discussion, by which the time of the House would be exhausted, and the means he used defeat the end he had in view, he would withdraw his motion.

The House then agreed to the resolutions without a division.

Mr. RANDOLPH moved the reference of the two first resolutions to the same committee.

He said, in reply to the gentleman from Delaware, that he made the motion respecting juries not because any complaint did at present exist of the exercise of the powers under which jurors were selected, but because they had not long since existed, and because in similar circumstances they might again exist. He was glad the gentleman from Delaware had no reason to complain of their present abuse. But this was no security against the future.

Mr. BAYARD said that he had spoken as he had done, not for the purpose of expressing any opinion that any abuse respecting juries had been recently removed under the present state of things; but to state that he had never heard of any complaints on this subject in the part of the Union from which he came; and he had particularly alluded to the mode of designating jurors in his State, which was by ballot. But if there were complaints in other parts of the Union, he would co-operate in any means that could be devised for removing them.

Mr. SMILE said, that since the gentleman from Delaware had introduced the subject, and had declared that no complaints existed, he would say that complaints had existed, that just grounds for them existed, and that they had been expressed in the loudest tone. And he would appeal to the gentleman from Delaware whether any man could be safe who was at the mercy of a marshal, who was the mere creature of the President.

Mr. BAYARD.—While man continues as he is, there will be complaints on this subject. We are divided into parties. The people as well as the President must belong to one side or the other; and whether we have sheriffs chosen by the people or marshals appointed by the President the evil will still exist. He had no objection, if it were the wish of gentlemen, that the marshals should be

appointed by the people; though we know that the people are as apt, nay, more apt, to be infected with violent political feelings than an Executive officer.

Mr. RANDOLPH said, that without desiring to exhaust the time of the House on a point where there was no difference of opinion, he could not permit the observation of the gentleman from Delaware to pass unnoticed; that an officer, holding a lucrative office, appointed by the President, and dependent upon his will, is as independent as a sheriff, elected in some States annually by the people, and in other States appointed in a manner calculated to insure his independence. He would instance the State of Virginia, in which the sheriffs were nominated by the justices of the county courts, who, it was understood, were to hold the office of sheriff in rotation. Will the gentleman say that these men, who are independent of the pleasure of any man, are liable to be made the same tools, with officers who hold their appointments at the absolute will of one man?

Mr. R. would further say, that the remark of the gentleman from Delaware, that the existence of no complaints had ever come to his ears, had excited his extreme astonishment. In North Carolina, he believed, no legal jury had been selected since the establishment of the Federal Government. In that State, in the State courts, all juries are first selected in the inferior courts, and then sent to the superior courts. He would ask, how, under these circumstances, a jury could be struck in a federal court in that State agreeably to law? In Virginia and Pennsylvania the independence of sheriffs is secured, therefore, no restrictions are imposed upon them in selecting juries; whereas, in the federal courts the Marshal is the abject creature of the Executive—and yet we are told the security is the same! Mr. R. did not wish to consume the time of the House; but when views are taken by gentlemen calculated, either as to fact or sentiment, to lead the public mind astray, if other gentlemen did not, he would invariably notice them.

Mr. BAYARD desired to explain. He had not meant to contend that sheriffs chosen for three years by the people were as dependent as similar officers appointed by the President. He had alluded to the effects which flowed from a marked division of parties. We were in all events subject to that evil. It was a truth that men deeply infected with party were more apt to be chosen by the people than by an Executive magistrate; because the people felt more strongly a degree of political fanaticism.

After some further debate, it was determined to refer the two first resolutions to a committee of seven, and the last to a committee of five members.

Ordered, That Mr. NICHOLSON, Mr. JOHN TALIAFERRO, Jr., Mr. GODDARD, Mr. RUTLEDGE, Mr. ISRAEL SMITH, Mr. HENDERSON, and Mr. BAILEY, be appointed a committee, pursuant to the first and second resolutions.

Ordered, That Mr. BACON, Mr. GROVE, Mr. ELMENDORF, Mr. HEMPHILL, and Mr. ABRAM TRIGG,

JANUARY, 1802.

Apportionment Bill.

H. OF R.

be appointed a committee, pursuant to the third resolution.

APPORTIONMENT BILL.

The House again resolved itself into a Committee of the whole House on the bill for the apportionment of Representatives among the several States, according to the second enumeration.

Mr. BAYARD moved to strike out the ratio of 33,000, for the purpose of substituting 30,000.

He was in favor of this last ratio, because it was the one within our Constitutional limits which left the fewest unrepresented fractions, and because he thought it very important that that ratio should be adopted, which would entitle the smaller States to at least two Representatives; that in case one of the Representatives were sick, or unavoidably absent, the State might not go unrepresented. Besides it was of great moment to a State, particularly to the State which he represented, that its Representative should have a coadjutor with whom to consult on its interests.

The ratio of 33,000 would be peculiarly severe in its operation on Delaware, as it would leave an unrepresented fraction of 29,000.

The ratio of 30,000 was still more to be preferred on general than on local principles. He had always been for increasing the strength of the Government of the United States; no further, it was true, than to enable it to protect itself from subversion or depression by the unconstitutional encroachments of the States. He might in some measure have derived these views from the relation in which he stood to a small State; for it was certain that the smaller States had a deeper interest in the Federal Government than the larger States; as, without the protection of that Government, they might be overwhelmed by the larger States.

He never had believed that the strength of the Government was to be increased by extending the power of the Executive. But he believed its strength would be increased by augmenting the numbers of that House, which would invigorate the affections of the people; and he believed that by thus increasing the energies of this body, more power would be conferred on the Government by an addition of ten members, than would be conferred by giving it an army of 10,000 men.

The gentleman from Virginia had denied that this House was the representative of the people, affirming it to be the representative of the States. Mr. B. hoped, if he misinterpreted his ideas, that the gentleman would explain.

Mr. RANDOLPH would explain. He had said that this House was not the representative of the people over the United States, but the representative of the people of the individual States in their sovereign State capacities.

Mr. BAYARD considered the opinion of the gentleman incorrect, and thought it extremely important that on this point correct ideas should be entertained. He viewed the representation in that House as national, and he considered himself as much the Representative of Virginia as the gentleman himself. In this House we have no other

relation to the States than that which regards our origin. We form a great national body, designed for national purposes; and as soon as we come here we lose our State characters. The Government is of a mixed kind. In the Senate the States are completely and exclusively represented. But on this floor there subsists no relation to States. We are solely related to the people, and our representation is in proportion to the numbers of the people.

There was one argument to him conclusive. A majority of Representatives may bind a majority of States; and the Representatives of three or four States, forming that majority, may bind the whole Union.

Mr. B. knew that the arguments he had urged had been met by the expression of a fear that this body might gain an influence that would outweigh the several States; and that this Government might become too strong for the governments of the States. But his fear was that the governments of the States might become too strong for this Government. What reason was there to apprehend danger from the augmentation of the members of this House from about one hundred and forty, of which it would consist according to the ratio of 33,000, to one hundred and fifty-four, of which it would consist according to that of 30,000? Can the States apprehend any danger? For instance can Virginia entertain alarm? When at present she sends here nineteen members, and has in her own legislature from one hundred and ninety to two hundred members; and when, according to the two ratios proposed, she will send either twenty-two or twenty-four members? Is it conceivable that the confidence of the citizens of Virginia can be shaken in her own State representation, by this inconsiderable addition to her federal representation?

Mr. B. concluded by recapitulating his arguments in favor of the ratio of 30,000.

Mr. RANDOLPH considered this question as involving two points: The one, which was of inferior magnitude, whether the representation upon this floor should be increased, by a few members, with a view to the relative weight of this or that State; the other, which was of the last importance, whether it should be so increased for the purpose avowed by the gentleman from Delaware, of augmenting the power, as yet too small, of this Government, and of course so far diminishing that of the States. Thus the question, in itself a matter of comparatively small moment, becomes of serious consequence as a test of political opinion. I wish to put it upon that issue, to see whether a majority of this House are disposed to advocate the position of that gentleman. Without entering into the question, whether the power devolved on the General Government by the Constitution, exceeded that measure, which, in its formation, he would have been willing to bestow, he had no hesitation in declaring that it did not fall short of it; that he dreaded its extension, by whatever means, and should always oppose measures whose object or tendency it was to effect it. The gentleman tells you, sir, that from the number of

its connexions with the people, the State governments possess their confidence in a high degree; that there is danger of an abuse of this confidence; that through it the large States may thwart and control the General Government; that it then behooves the small States to come into the measure which he proposes, from a consideration that it will operate, in that way, to reduce the power of the large States. An increase of representation, we are told, will do more towards increasing the power of the General Government than a military force. But when military and naval preparations and every other expedient devised for carrying that power beyond the Constitutional limit has failed, I trust that this House is not to be sent on that forlorn hope, at the instance of those whose interest it is in the distribution of power between the several branches of this Government, to transfer as much of it as possible to the other branches; who have, in the pursuit of this system, contended that we did not possess a discretion over the public money, but were bound to appropriate it on requisition from the Executive.

This House, I trust, is not become an engine in such hands for engulfing into the vortex of the General Government the powers of the States, and then settling the distribution of those powers. They will recollect that the exercise of this power, to be wrested from the States, is to be shared by co-ordinate branches of the Government, where the weight which regulates this body is felt, either partially, or not at all; I mean the population of the States. If a consolidation into one great National Government is to take place; if ever the State governments are to be set aside; if the powers of this Government are to extend beyond objects federal in their nature, let us not suppose that the people of the United States would freely consent to the exercise of those powers by a Government which, if viewed as the Government of an individual sovereignty, and not as that of a number of confederated States, contains principles which are highly objectionable; which are even repugnant to our received truths respecting the nature of Government. For, sir, I hold that if there be a principle fixed in politics, it is that the people of every country should have their equal weight in the direction of their Government. But suppose the State governments gone, or existing as the mere skeletons of power, while this Government, in high political health and vigor, is in the exercise of every right belonging to an individual sovereignty. Look to the distribution of those powers; see by whom they are to be exercised. In this branch alone you will find the Republican character; in the other it is not to be seen. There, is that principle virtually acknowledged which gives to Old Sarum and Newton a representation equal to that of London; a principle which is believed by some essential to the existence of that well-ordered Government, or perhaps of any other which they are willing to bestow upon man; the principle that the governors are not to be under the complete control of the governed; in other words, that the majority

ought not to govern. In the appointment of the Executive the same spirit prevails, although somewhat modified. When a Government thus constructed is to exercise the power, our surprise is somewhat diminished that those who would possess so undue a share of that power, were it once consolidated, should feel disposed to augment the influence of the Government; nor that those who would be dispossessed, in that event, of their full share in the direction of affairs, should be equally anxious to restrict it. But the Committee will perceive the wide distinction between this Government and that of an individual State. The one is simple, and all parts of it are referable to a great principle; the other is the creature of compromise, instituted for Federal purposes, to which the States were incompetent. The proposed devolution of power was so great, so intimately affecting the wealth and population of the States, as to excite in the large States an invincible repugnance to part with it, unless its exercise was in some measure regulated by the quantum of the population and wealth. Hence the origin of this House, elected by the States, in the ratio of population and wealth; while in the Senate the sovereignties, as such, are allowed an equal representation, and the influence in the appointment of the Executive is compounded of these. And even this power of choosing the Chief Magistrate of the Union, is, in a certain event, which has already occurred, and which will be memorable as long as this Government endures, to be exercised by this House, voting not so that the delegations shall represent the population and wealth of the States, but their sovereignty only. Did not the gentleman from Delaware feel his weight on this floor to be equal to that of nineteen Delegates from Virginia? This spirit of compromise, sir, I conceive to be the key of the Government. It is the principle which pervades it throughout and resolves every question which arises on its nature. This shows, sir, that it is to exercise Federal powers, leaving to the States the regulation of internal concerns. For this object, it is constructed so as to compose the jarring interests of the States. Extend it further, let it embrace objects for which it was not designed, let it trench upon the powers of the States; make it a National Government, in the sense contended for, and it becomes a Government vicious in its organization, since the reasons for that organization cease to apply whenever it ceases to be a Government of States, and becomes a Government of the people in the aggregate. And yet it is affirmed that we are not the Representatives of the States—that is, of the people of those States in their respective sovereign capacities—but of the aggregate of the people of the United States, in their national capacity. If that be the case, should we not apply the ratio to the aggregate of persons entitled to representation in the United States, and not to those portions in the respective States? If this be true, where is the Federal character of this Government? And yet the gentleman affirms that he is the Representative as much of Virginia as Delaware, and the Representatives of the first are equally the Rep-

JANUARY, 1802.

Apportionment Bill.

H. OF R.

representatives of the last. Wherefore? Because his acts are to bind Virginia as well as Delaware. If this proved anything it would prove that the Senators of each State represented all the States, for certainly their acts are binding upon them. But if the gentleman does represent Virginia, certain I am that I do not represent Delaware; I am not elected by the people of that State; I receive no credentials from it to this House; I hold not myself responsible to it. I know it not on this floor, except through the medium of its legitimate organ, through which it speaks to us, its Representative. Upon this view, sir, what becomes of the complaint that the gentleman is *deserting* of a colleague with whom he may consult; possessing as he does the whole Committee for his colleagues?

As another motive to accede to his proposition we are told that it will increase the relative weight of one or more small States. I hope I shall be pardoned for observing that this motive has been selected with singular infelicity, since it is addressed to the large States, who may, without improper imputation, be supposed of opinion that the weight of the small States is already sufficiently felt, and that it does not behoove them to give their aid to increase that weight in this branch of the Legislature, to the comparative diminution of their own, to the utmost limits which the Constitution will permit.

Mr. R. concluded by observing, that he thought the House would be sufficiently numerous, at the ratio contemplated by the bill, for all Federal purposes; that to increase the representation to meet the views of the gentleman from Delaware, would, in their fullest extent, were it practicable, supplant the State governments. That the difference of five or ten members more or less on that floor was in itself unimportant. That if the ratio had been fixed originally at thirty thousand he should have felt little disposed to increase it, but he would not carry it back merely to answer the purpose for which it was fixed at thirty-three, the accommodation of certain States—much less with a view to decrease the influence of the State governments.

Mr. GRISWOLD had at the first been for a higher ratio than that of 33,000; and he would still be in favor of it did there appear any chance of its success. But as the dispute seemed to be between the ratios of 33,000 and 30,000, and as the former was the worst possible ratio that could be adopted, as it left the greatest aggregate of fractions, and operated with the greatest severity upon the small States, he should be for that of 30,000 in preference.

He had been surprised at the remark which had fallen from the gentleman from Virginia, that the members on the floor of this House were not the Representatives of the people; and he was more particularly astonished at this remark coming from the large States. He deemed the principle on which it was founded a dangerous principle, one subversive of the Government, and in the face of the Constitution, one which called upon every friend of the Constitution, and of the national

harmony, to repel it, as calculated to confer on the large States all power.

What does the Constitution say: "We the people of the United States," (not of Virginia, &c.,) "form a Government." It is afterwards declared to be established for the United States. It is the Constitution of the people of the United States. It constitutes a Senate and House of Representatives. Whose Senate and whose House of Representatives, he would ask? The Constitution would answer, not of the particular States, but of the United States. Is not this the plain reading of the Constitution? Can any gentleman say, he represents only Pennsylvania, or Virginia? No, sir, he comes not to consult the interest of Pennsylvania, or Virginia, but of the whole United States.

If the opposite principle be adopted, viz: that members are the Representatives of the States from which they come, then are the effects obvious. A combination of the Representatives of four States, composing a majority of this House, may overwhelm the whole interests of the United States. It had been said out of doors that such a prospect existed. He had not believed it. He did not wish still to believe it; and he hoped the Committee, seeing the danger of such an impression, would avoid whatever went to countenance it.

Mr. BACON.—The question before the Committee is an interesting one, and gentlemen who have risen to speak to it, appear to feel it to be such. There is reason to believe that whenever the question is determined, it will be done on uniform and moderate principles. It is to be hoped that few, if any, will be influenced to act by a fondness for extremes. Because I cannot be gratified by the adoption of one extreme, I will not rush to the opposite one.

A principal reason that is offered in favor of the amendment seems to be, the accommodation of Delaware; it is to relieve that State from a large fraction, and to give her two members in the House of Representatives.

I would pay the same respect to the State of Delaware that I would pay to any other State of the Union in like circumstances. The reason that is urged for striking out thirty-three, with a view to insert thirty, so far as it relates to the accommodation of Delaware, must, as I conceive, be predicated either on the principles of the Constitution, or on the principles of equity.

By the Constitution they are entitled to two members in the Senate. This, I believe, is about five times their equal proportion of representation in that branch of the Legislature, if the calculation was to be made either on their numbers or their property. But, in answer to this, it is said, and I readily admit that the answer is a just one: This is a right which they hold by mutual compact, that is, by the Constitution; and therefore ought not to be taken into consideration in determining the present question.

On the other hand, it must also be admitted that, by the same Constitution, they are entitled to that proportion of representation, and no more, in the

other branch of the Legislature, which may fall to them on any given uniform ratio which Congress are authorized and see fit to adopt. This position is no less equitable, sound, and rational, than the other; consequently, no argument can, as I conceive, be drawn from the principles of the Constitution in favor of the proposed amendment, as it may affect the particular case of Delaware.

Again: If leaving the general principles of the Constitution we recur to mere principles of equity, I believe the result will be nearly the same in both cases.

On mere principles of equity, I suppose it will be admitted that each State in the Union is entitled to a representation in Congress proportioned either to the number of its inhabitants, or to what it contributes to the support of the Government, which are considered as amounting to nearly the same thing. Calculating on these principles, then, the State of Delaware, even on the present ratio of 33,000, will have nearly one third more than its equal proportion of representation in the Congress. I can see no reason, therefore, to alter the present ratio, and thereby to create an annual and permanent expense of twenty or thirty thousand dollars, only for the sake of lowering a fraction and thereby adding one more Representative to the State of Delaware; and especially when I consider that, as the ratio now stands, she has more than her full proportion of representation in the Legislature; and that, whether the calculation is made on mere principles of equity, or on the common or the most rigid principles of the Constitution.

It has also been mentioned, as a reason for lowering the present ratio of representation, that the extent of election districts will thereby be contracted, and that, in this way, an opportunity will be furnished for Electors to become acquainted with the sentiments and conduct of their Representatives, so as not to be under the necessity of acting wholly in the dark in the execution of the right of suffrage.

I am apprehensive that recent experience has taught us that it is not necessary at this day to lower the ratio, for the purpose last mentioned. From a uniform practice upon the present ratio, which has now become familiar, and the repeated elections which have taken place under it, the object mentioned seems to have been already attained. It is obvious, I suppose, that a very considerable change has lately taken place in the political sentiments of our fellow-citizens throughout the United States. This change of sentiment is supposed by many to be for the better, and that it has been effected by the diffusion of information among the people, and a more thorough and competent acquaintance with the sentiments and characters of their Representatives and candidates. Those, therefore, who believe that such interesting and salutary effects have occurred from a uniform practice on the present ratio, and that the effects of the same practice are meliorating from year to year, and from one election to another; such, I say, who believe this to be our case while practising on the present ratio, cannot con-

sistently, as I conceive, wish to have it altered with a view to try a different one, since this has been found to answer the end desired.

There are others, no doubt, who verily believe that the former days were better than these, and that the elections that were made on the present ratio, when it bore a much greater proportion to the whole number of citizens than it now does, were more wisely conducted, and that they were attended with much more salutary effects than those are which lately have been made. Those who are of this opinion, I must suppose, cannot consistently wish to lower the ratio, so that it may bear a still less proportion to the whole number of citizens than it even now does, for this would tend to enhance and not to remedy the evil complained of. Let the subject, then, be viewed in either of those lights which have now been mentioned, and I cannot see but that if we act consistently, as I presume we shall, that it will be almost the unanimous opinion of the Committee that it is not expedient to adopt the motion, and to strike out the number 33, with a view to insert 30.

It has been suggested that we ought to increase the representation, because we shall thereby increase the confidence of the people in the Government. I suspect this to be a reason that exists in theory rather than in fact. So far as my observation has extended, I have not found that the confidence of a people in their government is always in proportion to the number of those who administer it; nor yet that the confidence which is reposed in the different departments of the same Government is in exact proportion to the numbers which compose those departments respectively. How is it in our own Governments, both National and State? I need not descend to a minute comparison; I will only observe that, by showing a disposition to increase our own numbers beyond what is necessary, would, in my opinion, tend rather to diminish than to increase the confidence of the people in their Government.

Mr. DAVIS.—Two ratios are brought to our view, those of 30,000 and 33,000. The former leaves unrepresented fractions amounting to 15,700; the latter leaves fractions amounting to 221,000. It would be most equitable to adopt the former but for its operation upon a number of States. Six States, of which Kentucky is one, will be peculiarly affected by it. They will relatively lose their portion of representation in a great degree. They will lose as many members as the ten remaining States, whereas by the ratio of 33,000 the evil will be, as to those States, greatly diminished. For this reason, notwithstanding the unpleasant situation of Delaware, Mr. D. must vote for the ratio of 33,000.

Mr. MACON never had considered this as a consolidated Government, which might be inferred from the arguments of some gentlemen. The Constitution established a directly opposite principle. It declared the Constitution to be established for the United States, not for the people; and in all its parts it bore a Federal complexion. In the arguments made use of when it was adopted, it had always been declared by its friends to

JANUARY, 1802.

Apportionment Bill.

H. OF R.

be Federal; and the Representatives were particularly designated as the Representatives of particular States.

Mr. M. did not think 30,000 too small a ratio. He wished the people to know their Representatives, and the more numerous the last were, the greater was the chance of this knowledge; nor did he think that the enlarged representation would augment the expenses of the Government. The House knew he had never been prodigal of public money. He believed we should save money by an enlarged representation, for the public expenses did not proceed so much from the compensation rendered to the members of this House, as from the adoption of improper measures, which an enlarged representation would defeat.

With regard to the abstract arguments made, did not the dispute about different numbers show that we are all the Representatives of particular States? Else, why take Delaware as the minimum and Virginia as the maximum? This demonstrated the question to be one entirely of calculation.

Mr. S. SMITH had listened to the discourses of gentlemen on the abstract question introduced, and yet he had found that every gentleman, before he sat down, proved himself to be the Representative of a particular State, after all that he had said. The truth was, the point was one altogether of calculation. The gentleman from Connecticut had been strong for 40,000; and now, after making his calculation, he agrees with his friend from Delaware in preferring 30,000; not, perhaps, because it peculiarly benefits Connecticut, but because it benefits the party with whom he acts. Let us view the gentleman from Delaware, and we see him pursuing the interests of Delaware, and caring nothing for other States, and thus he shows us that he is the Representative of the State of Delaware. The gentleman from North Carolina, heretofore always economical of the public money, is for once prodigal in wishing an enlarged representation; and why? Because he thereby will promote the interest of his State. This was perfectly fair and right; and if he, Mr. S., were similarly situated he should act in the same way. But, Maryland happened to be differently situated. The ratio of 30,000 would leave a fraction to her of 29,000. Could it, therefore, be expected that any member of that State would be for that ratio?

Mr. SMILIE observed that he had originally been in favor of the ratio of 33,000, from the influence of general principles. But since one gentleman had shifted from 40,000 to 30,000, from considerations of policy, and other gentlemen seemed to feel the same motives, he thought it was high time for each State to take care of itself. He would, therefore, vote for the ratio of 33,000.

Mr. DANA said he would not question the purity of the principles of the gentleman from Maryland or Pennsylvania. Yet he must say that, however honorable to the frankness of character of the gentleman from Pennsylvania, was the avowal of his sentiments, yet it did no honor to the principles of equity which ought to govern that House. As to the question of confidence or consolidation, he

deemed it a mere question of words. It was right that we should consult the interests of our constituents, because we were better acquainted with them than with those of the other States. But that we should exclusively consult them, to the disregard of the general principles of justice, of the great interests of the United States; such a principle ought not to be tolerated. Though the question was, in a great measure, one of calculation, yet he was astonished at an avowal of one gentleman to conform to unjust principles because another gentleman had in his opinion adopted the same course.

Mr. D. then went into a detailed comparison of the different bearings of the two ratios, from which he was in favor of 30,000.

He then proceeded. The question between the two ratios is not simply important as it relates to this House; but as it settles the relative weight of the States in the election of our two first Executive magistrates. Just as you diminish the ratio you increase the weight of the large States; and this may be done until you shall give the large States the entire monopoly of Executive power. He would not say that the large States were not entitled to a monopoly of this power. He would not say that a majority of talents and virtue correspondent to the magnitude of the States, did not subsist; but until he was sure of this, he would not be for conferring a monopoly of power on four States. Those States being the most important, it may be thought right to take the Chief Executive Magistrate from them, and the other chief officers; and this may become so much a matter of course, that it may be deemed injurious to disturb the established harmony of things. For these reasons Mr. D. was against the ratio which gave undue weight to the large States.

Mr. EVSTIS said, there was a sound principle which applied itself to the elucidation of this question. The present ratio had given general satisfaction. As to the abstract questions which had been discussed, they were wholly immaterial. Let us go back and view the circumstances under which this House was organized. It was so constituted as to afford the people of the United States an opportunity of expressing their feelings and representing their interests. Has any inconvenience resulted from the ratio of thirty-three thousand, long since adopted? Has it not been recommended by experience? And will not any desire to augment the representation be fully satisfied by the increase from one hundred and six to one hundred and forty-two? Whether the number was great or small, he had no idea that the powers of the House could receive correspondent augmentation or diminution. He believed that a body of fifty men would not want decision to oppose unconstitutional encroachments, and that a body of one thousand would not dare to transcend Constitutional powers.

Though he felt for the situation of Delaware, yet, if the principle was correct that the ratio of thirty-three thousand would constitute a body sufficiently large, we must, of necessity, abandon any particular regard to that State.

H. OF R.

Connecticut Reserve—Perfect Motion.

JANUARY, 1802.

There was another circumstance worthy of mention. A diminution of power was abhorrent to all bodies. If a great increase of the members of the House increased its power, and a precedent be now set of greatly enlarging our number, it may be followed in future, until the House becomes so large as to render it a nuisance.

The Committee rose, reported progress, and had leave to sit again.

TUESDAY, January 5.

A memorial of sundry aliens, residing in the city and county of Philadelphia, in the State of Pennsylvania, was presented to the House, and read, praying a repeal of an act of Congress, passed the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend, the act entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject,'" which was referred to the committee appointed, on the fifteenth ultimo, to prepare and bring in bill or bills for a revision and amendment of the laws respecting naturalization.

CONNECTICUT RESERVE.

A petition of sundry inhabitants of the State of Pennsylvania, settled on the lands claimed under grants from the State of Connecticut antecedent to the trial before the Court of Commissioners between the States of Pennsylvania and Connecticut, was presented to the House, and read, praying that the authority of the Supreme Court of the United States to re-examine and reverse or affirm a final judgment or decree in the cases provided for in the 25th section of the Judiciary act, may be extended or declared already to extend to cases of criminal prosecutions as well as of civil actions; that original and exclusive jurisdiction may, agreeably to the Constitution, be given to the proper courts of the United States in all controversies between citizens of the same State claiming lands under grants of different States; and that the Supreme Court may be empowered, at their discretion, to direct the trial of such causes, to be holden in districts other than the States in which the two opposite titles are claimed, (unless the claimant under the other than that in which the land is, shall waive the right of trial in a Federal court,) or that some other adequate relief may be granted in respect to the disputed claims of the petitioners for the lands aforesaid.

Mr. GODDARD moved to refer the petition to the committee appointed to inquire into the expediency of making any alterations in the Judicial Establishment of the United States.

Those who supported the reference were Mr. GODDARD, Mr. BAYARD, Mr. T. MORRIS, Mr. BACON, Mr. HEMPHILL, and Mr. RUTLEDGE.

Those who opposed the reference were Mr. SMILIE and Mr. RANDOLPH.

In support of the reference it was declared that all petitions couched in decent terms, ought to be referred, else the House would be precipitated into decisions without possessing correct information;

that this case was important in its effects upon a large class of citizens, who had a right to be attended to by Congress; that the controversy to which the petition related, was of long standing, and that it became that House to treat the prayer of the memorialists with respect; that it was believed that Congress neither could or would interpose; and that, if such were the determination of Congress, expressed after mature consideration, it would tend more effectually than a present suppression of the petition to deprive the memorialists of any expectations derived from the hoped-for interposition of the Federal Legislature; that, in this result, Pennsylvania was as deeply interested as the petitioners.

On the other hand, it was declared that Congress had no power to interfere; that the question was entirely judicial, and had been decided by the first judicial authorities of the nation; that the rights of Pennsylvania were conclusively established; and that Congress could do nothing that would impair them.

A reference at last obtained, by general consent, under the suggestion that the memorial prayed for a revision of the Judiciary System, so far as relates to the selection of juries.

PERFECT MOTION.

A memorial was presented from Lewis Dupre, of which the following is a copy:

To the Government of the United States in Congress assembled.

DEAR FRIENDS: It has pleased Almighty God (for purposes most extensively benevolent) to discover to me the principles of the *perfect* motion, (vulgarly called *perpetual* motion,) for which I trust I am thankful, (as, no doubt, every citizen of the super-eminently favored land of Columbia ought to be,) for the peculiar blessing.

In prosecuting a suit for the customarily exclusive pecuniary advantages which the practice of ancient liberality has established, as the reward of *persevering* ingenuity and industry, I meet with difficulties insurmountable without the aid of Legislative interference.

I, therefore, trust that your justice and republican patriotism will induce you to take the subject into consideration, and as speedily as possible obtain, from the critical casket where it remains deposited, the precious bounty, to effectuate which you hereby possess a promise of the cordial co-operation of your real friend and fellow-citizen,

LEWIS DUPRE.

50th day of perfect motion, Jan. 1, 1802.

On the motion to refer the above petition to a select committee.

Mr. MITCHILL said, if there was a case in which it was proper to decide against the reference of a petition to a committee, that was such an one. It was evident on the face of the petition just read, that it was a strange, disordered composition; and the object which the petitioner pretended to have attained, was contrary to the physical laws of matter. All experience and all philosophy was opposed to the notions of the kind contained in the paper before the House. He hoped there would be no reference of such a visionary scheme to any committee whatever. It was not worthy of the

JANUARY, 1802.

Apportionment Bill.

H. OF R.

National Legislature to give a serious attention to physical impossibilities.

After some debate about the disposal of the petition, it was ordered to be referred to a select committee; and Mr. SOUTHARD, Mr. LOWNDES, and Mr. MITCHILL, were appointed.

APPORTIONMENT BILL.

The House again resolved itself into a Committee of the whole House on the bill for the apportionment of Representatives among the several States, according to the second enumeration.

Mr. BAYARD said, he should beg the indulgence, before the question was taken, of a few observations in reply to the arguments of the gentlemen opposed to him. The peculiar interest in the subject which attached to his State would apologize for the trouble he had given the Committee. It had been said that Delaware ought to be satisfied; that, if she had ground to complain of the want of a complete representation on this floor, the equality she enjoyed in the Senate, and her weight in the election of President, were juster grounds of umbrage to the larger States. He was surprised at such an intimation.

The Constitution had settled the political pretensions of the States, and each one had a right to insist upon the full advantages which justly belonged to it on Constitutional grounds. Delaware was satisfied with the Constitution; but it was not to be expected she would yield a pretension she could rightfully claim.

In the present instance, what was insisted on, he could demonstrate to be equitable.

It was only asked, that the State should be represented in the proportion she was taxed, in the proportion she supported the burdens of the Union.

In the apportionment of the direct tax lately levied upon the United States, the quota of Delaware, relative to Virginia, was as one to eleven; relative to Pennsylvania, as one to seven. The apportionment of representation upon the ratio adopted by the present bill, was in relation to Virginia, as one to twenty-two; and in relation to Pennsylvania, as one to eighteen.

He would appeal to the candor of the House, if it could be just that the proportion of taxation should be double the proportion of representation. The Constitution had connected them, and evidently contemplated their proceeding in the same progression.

He could not help indulging a hope, that neither the apathy nor the interests of the larger States would induce them to oppose the justice of a case which was so glaring.

He would add, on this head, that the white population of Virginia, in relation to Delaware, did not exceed the proportion of nine to one; and he did not believe that a greater portion was paid by Virginia of the taxes derived from excises and the duties upon imports, which composed the principal pecuniary burden of the United States.

In the militia requisitions, Delaware stood, in relation to Virginia, as one to ten; in relation to Pennsylvania, as one to nine. In short, turning

his views to every object, he could discover no equality between the burdens supported and the representation allowed to Delaware by the present bill. On the contrary, the ratio of her burdens was, in all cases, double; and in many, more than double that of her representation.

Some gentlemen had asserted that it was indifferent to what part of the nation the unrepresented fraction belonged, whether to a small or to a large State.

If, said Mr. B., we had interests as a nation only, and not as States, the assertion might be correct. But was he to be told it was the same thing to Virginia, whether she had twenty-two or twenty-three members, as it was to Delaware, whether she had one or two? With a view to every State consideration, the loss of a member to Delaware was equal to the loss of eleven to Virginia. Suppose Virginia to have twenty-two representatives, Delaware two, and the other States in their several proportions, and a general agreement is made to strike off one-half of the representation. The loss to Delaware would be one member, to Virginia eleven, and the other States in proportion.

Mr. B. said, he might console himself and comfort his constituents, if it were practicable, and gentlemen were disposed to equalize the ratio of taxation with that of representation. But of this he had no hope, either as a thing feasible under the Constitution, or as a thing to which the House would be ever brought to consent. He had no other resource, than to rely that the magnanimity of the larger States would protect from injustice and oppression their smallest and weakest sister.

Mr. B. said, he was not governed in the opinion he had adopted in relation to the ratio by the consideration solely of State interest. His great object was to augment the members of the Representative branch of the Government. He believed that the strength of the National Government existed in that House; and by increasing the members of this House, its weight and strength were augmented. He confessed it to be his object to make the General Government so strong as to be able, with equal certainty, to control the largest as the smallest States. It was now able to govern the small States; but if one of the largest should deny and resist the authority of the Union, he doubted the ability of the Government to enforce obedience to its laws. He had occasionally advocated an increase of Executive authority. He had then been charged with views unfriendly to republicanism. He was now contending for an increase of the weight of the popular branch of the Government.

He was actuated by the same motive which had always induced him to give his support to the Executive. His uniform object had been, and would continue to be, to maintain the independence of the General Government, and to render it efficient enough to curb the ambition, and to repress the dominating spirit which was inseparable from the large States. His voice had never been to vary the relative powers of the Executive and Representative branches; but generally by increasing

the strength to confirm the stability of the Government. An opportunity now presented itself of promoting the same object by augmenting the weight of the popular branch; he embraced it with more zeal than he had ever felt in the support of the Executive prerogative. He rejoiced in an occasion which enabled him to manifest, that the true object of his views was not inimical to the equal rights and Constitutional liberties of his country.

He was firmly convinced that the House of Representatives was, and necessarily would be, the main pillar of the General Government. While this branch retained the attachment and possessed the confidence of the nation, the Government would endure, but if any State could succeed in weaning the affections of the people from this House, and transferring their confidence exclusively to the States, the Government would perish. He wished to enlarge the field of action and employment under this Government. So small a number occupy the ground upon the floor of this House, that the talents and ambition of the mass of men aspiring to distinction are directed to State objects, and seeking the aggrandizement of the States, eventually become hostile to the General Government. The representation of the country was too sparse, it was not sufficiently united and bound to the bosom of the nation.

The same sympathy and confidence did not subsist between a Representative and a constituent when widely separated. Under the State governments, the representatives proceeded from every neighborhood. They were well known, connected by common interests and friendship, and thence enjoyed the entire confidence of their constituents. Whereas, a Representative in this House is known by name only, to the greater number of those who elect him.

This evil will always remain, but it may be diminished. A gentleman from Virginia (Mr. RANDOLPH) expressed his apprehensions that, by augmenting the members of this House, the splendor of the State Legislatures would be obscured, and they might ultimately dwindle into insignificance. Mr. B. said, that it was certainly strange that when Virginia alone had a House of Representatives composed of 190 members, such an apprehension should be expressed, when it was proposed to allow to all the United States only 156. In her State Legislature, Virginia would have 190 members, when her representation here would consist only of twenty-four.

It had been insinuated that he was unfriendly to the State governments. He declared the insinuation to be without the smallest foundation. On the contrary, his principles and conduct demonstrated his attachment to those governments. The safety of the State governments reposed upon the strength of the General Government. The Constitution expressly guaranties the integrity of the States. He could conceive of no motive which could lead to the abolition of the State governments. Suppose them abolished, what advantage would the inhabitants of a small State derive. They are melted down into a national mass,

but they acquire nothing which they did not enjoy before, nor anything which every one does not enjoy in common with them. The insinuation supposes some greater advantage or greater honor, in living in a large State than in a small one. Of any such thing, he was not in the smallest degree sensible. He felt the same satisfaction, and was quite as proud to represent the State of Delaware, as he could be to represent a district of Virginia. If the case was otherwise, and he could feel any little pride in saying he belonged to a large State, it was a feeling which a trifling change of place might gratify. But, said Mr. B., the people of the small States have as great a stake in their governments as those of the large.

Upon those governments depend their peculiar laws, their moral and religious institutions, which have fashioned their manners, and habits, and sentiments, and opinions. It is impossible to imagine that the people of any State would be willing to see the system of rights and obligations, of wrongs and remedies, belonging to private life, which has been hallowed and consecrated by antiquity and usage, liable to be broken down by the powers of a General Government.

Is this supposed, too, to be the project of the Eastern gentlemen? For his part, he was infinitely more apprehensive, that the disposition of the Eastern people was to separate, rather than politically to amalgamate themselves with the Southern.

Taking an opposite view of the subject, Mr. B. said, he could discover motives which might lead the aspiring men of large States to seek the depression of the General Government. The General Government removed, they stood like the lofty oaks among the brambles of the forest.

All experience had shown political bodies, equally with individuals, stimulated or impelled by the passion of aggrandizement. It was possible for the great States to see an interest in the depression or dissolution of the Federal Union; but it was impossible for the small States to derive an advantage from the abolition of the State authorities. The danger, therefore, to be apprehended, was a dissolution of the Union by the large States, and not a consolidation by the small.

It had been denied by a gentleman from Virginia, (Mr. RANDOLPH,) that this House represented the people of the United States; and asserted that we are to be considered on this floor as the Representatives of the people of the States. By this he understood that the representation of each State were to be considered as representing only the people of their own State. This doctrine he considered as repugnant to the nature of the Government, and tending to efface its leading features. The gentleman had recourse, for the support of his position, to the words of the Constitution, which declare that the Representatives should be chosen "by the people of the several States."

In fact, by the laws of the several States, and particularly of Virginia, the Representatives were chosen in districts; and if there was anything in

JANUARY, 1802.

Apportionment Bill.

H. OF R.

the gentleman's argument, the members from that State ought not to be severally considered Representatives of the State, but of the particular districts for which they were chosen.

Mr. B. here quoted the provisions on the same subject, of the constitutions of Virginia, North Carolina, and Pennsylvania; and remarked that the expression more strongly confined the election of the members of the State Legislatures to persons residing in the several counties; and observed that there would be the same propriety in contending that the members of the State Legislatures were not to be considered as representatives of the whole State, but each of the respective county by which he was chosen.

Much had been said about consolidation, with little attention to the subject to which the term was applied. Nobody could deny that the General Government was a consolidated Government, to the extent of its powers. The States remained unconsolidated, but the powers delegated to the General Government were consolidated. Within the sphere of its power, there was the same unity of action as in the State governments. The Government was created for national purposes, and was constructed on national principles. Its powers are limited, but, in the exercise of its powers, it acts as a national, and not as a federate body. Mr. B. here read the letter of General WASHINGTON to the President of the Old Congress, announcing the adoption of the Constitution; and particularly remarked on the following: "In all deliberations on this subject we kept steadily in view, that which appears to us the general interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, and safety, perhaps our national existence."

The sentiments of the letter maintained the doctrines for which he contended. It was the source of peculiar gratification to have the support of an authority which once commanded universal respect, and for which his own reverence had not in the smallest degree abated.

Mr. B. said, he had been reproached with a wish to increase the power of the Government; that failing, to increase the power of one branch, as a last resort, an attempt was now made to increase that of another. Nothing could be more unfounded than this charge. The measure he proposed added nothing to the powers of any branch of the Government. It was simply to increase the number of hands in which the existing power was to be deposited. The point of difference between him and the gentlemen opposed to him, was, that he was desirous of committing the powers of the Government to a greater, and they to a smaller number. He wished to multiply the representatives of the people; they to diminish. Whether the House consisted of one hundred or of one hundred and fifty members, the powers of the Government remained the same, though probably a power exercised by 150 would be more likely to be attended with effect, than if supported only by 100.

Mr. B. concluded, with a brief recapitulation

and application of the general points of the argument.

Mr. MITCHILL said, he hoped the motion would not prevail. He wished the interests, the rights, and even the feelings of the people of America, to be fairly and fully represented. But he was by no means persuaded that this desirable object would be, in any sensible degree, promoted by the motion before the Committee. The bill contemplates the establishment of the ratio of representation, which the citizens of the United States shall have in this branch of the National Legislature. Various ideas had been entertained and stated, concerning the nature and object of this Legislature. It had been urged by one gentleman that States only were represented here. It had been contended by another, that the members of this House, though chosen by States, ought to be totally detached from State influence. He believed neither of these conclusions were strictly correct. His own opinion was, that the Federal Constitution was an institution for which there was no example in history. In vain was any Government like it looked for among the Republics of ancient Greece. The Achæan league was, indeed, a noble, though inefficient attempt, at something of the kind. In modern Italy, warfare and contention had generally kept the Republics at variance; and the struggles between the rival Powers of Genoa and Venice, had manifested as uneasy a spirit abroad, as the Athenians and Florentines had shown at home. Even among the Swiss and the Grisons, there was a confederation of States, and not a representation of them, in a general council. The cantons of Helvetia were a mere confederacy of Republics; that is, a leaguering together of distinct and independent sovereignties, by compacts and treaties, for the safety of the contracting parties. But there was no general council of the nation. In the United Netherlands, some approach towards a form of government had been made; yet the system was immature and imperfectly elaborated.

In America, the organization of the political system was widely different. Here, different colonies had been settled and provinces conquered, under European Governments. They grew and prospered as dependents upon a transatlantic sovereign. In process of time, oppression threatened them with her iron rod, and they declared, with one voice, they would be free. Instantly each colony and province was erected into a free and independent commonwealth. The pressure of external foes forced them all to combine in a common cause. A sense of impending danger made it necessary for all those newly erected sovereignties to associate for the purposes of general defence. They bound themselves by an article of agreement for that great purpose, and associated themselves, as well as they could. But the coalition was too lax and incoherent to endure long. As soon as peace was made, and the fleets and armies of the enemy were withdrawn, the Congress was found to be nerveless, and without power.

Another attempt was made to meliorate the plan of the General Government. And the result

of that effort, is the present happy and unexampled Constitution under which we are assembled; a form of policy without parallel in the annals of nations. For here, the commonwealths of America, reserving to themselves the right of sovereignty as to local, individual, and internal affairs of each, send Representatives to this House, to deliberate upon the more extended, general, and exterior matters which are interesting to them all. It is only in relation to this latter object, that the establishments and powers of the House of Representatives ought to be contemplated. And this object was particularly defined in the Constitution of the United States. So far as power was given by that Magna Charta of our liberties, and no further, did the Legislative powers of this body extend. The great regulations by which the security of our reputation, our property, and our lives, were guaranteed, rested chiefly with the State Legislatures; and he was happy he had left all those invaluable rights provided for, and well preserved at home. For the regulation of the principal part of territorial and local concerns, involving the right of individuals, and the relation of these to things, as well as the modes of preventing and punishing crimes, he was perfectly satisfied that the requisite power and wisdom resided in the respective States; and there it ought to reside. How, then, is this House constituted? By the States, whose qualified inhabitants chose Representatives. For what object is it constituted? To deliberate upon those general questions, merely, which are expressed in the Constitution, and are truly of a federal, universal, or national nature.

He considered such a Government as of a new and peculiar construction. It had been called by some, "Federal;" he questioned the correctness of that term, as both the words federal and confederated, if regard was had to their etymology and derivation, meant a connexion of independent States by treaties. By others, it had been termed a sort of consolidation, as respected a number of great and leading objects. He believed that there might be some hesitation at admitting either of these terms. It was certainly not a confederacy of States; and it was no less evident it was not a consolidation. This peculiar Government, for which, as far as his recollection went, there hardly existed an appropriate name, seemed to him a kind of political partnership, where each of the parties concerned, besides a separate interest, has a joint interest in the common stock.

Now, these conjoint interests are so blended and mingled together, that, in the important points of general welfare and common defence, there is a community extending to the whole; and so analogous are the predominating benefits to be derived from this organization, that, on the great outlines of the subject, there is a remarkable similitude of sentiment. From the limited extent of the Constitutional powers of this House, a very small representation, that of thirty thousand, had been thought sufficient by the framers of the Constitution. And from the community of interest in the greater part of the subjects delegated to them by

the States, there would be seldom a difference about principles, but the variations, whatever they were, would exist, in the modes and forms of doing things.

Considering how comparatively few things this House had to attend to, he thought that ratio a large one. At the close of the former census, a preceding Congress had thought so. They even determined to lessen it, by declaring that one for every thirty-three thousand was enough. He believed the interests and liberties of the citizens were sufficiently secured at that ratio. If he had any reason to doubt this, he would consent to enlarge the number to the utmost of the limits of the Constitution. But ten years experience had shown that the representation had been not only equal, but adequate. He had not heard of complaints abroad upon this subject. He believed the citizens were satisfied with it. He thought that public opinion and public confidence had been so long accustomed to the ratio of thirty-three thousand to one Representative, that it was at least useless, it possibly might be injurious, to change it.

Judging upon the matter on principle, he considered thirty thousand for one, as a large allowance; and now, aided by experience, he was convinced one to thirty-three was not too small. He had stated to the House, in a former debate, his opinion on a too numerous Legislative body. He should not repeat what he then had advanced; but only observe that, in an excessive representation, there certainly would be more expense and less dispatch in business. As to the State of New York, whence he had the honor to come, there had been lately a strong expression of the sense of the citizens on this subject. In a convention lately held for the purpose, it was ordained that the ratio of representation should be lessened in the branches of the Legislature.

Much had been said concerning the large fraction in the State of Delaware. This was to him a matter of secondary importance. This fraction, and all other fractions, would be virtually represented in the proposed ratio, as well as in any other that could be proposed. The peculiar and exquisite manner in which that House was constituted, gave every one of its members an interest in the whole of the national concerns before them. And it was the privilege and the duty of a member from New York, to consult the welfare of Maine and Tennessee; and of the members from those States to consult for the good of all the other States.

This community of interest, he contended, went so far, that even, in the case of laying a direct tax, that House could not, without violating the Constitution, cause Delaware to pay more of it than her rateable proportion. The census gave the number of her inhabitants, and beyond the amount of her population, it was not in the power of Congress to make her pay. And this rule would be inviolably regarded, even if her Representative should, by sickness or any unavoidable accident, be prevented from attending in his place.

Great apprehensions had been expressed of the

JANUARY, 1802.

Apportionment Bill.

H. OF R.

overbearing disposition of the larger States. He believed nothing had been advanced, during the session, so chimerical. The fears about rapacity, selfishness, and dominion, were visionary. When New York, a strong and powerful State, surrendered her impost, and poured her wealth into the national treasury, was that rapacity? In this magnanimous act, was there anything that looked like selfishness? Was the delivery of the key into the hand of the nation, a grasping for dominion? No; there was nothing like it; nor was there any probability that such proceedings would ever happen. The smaller States were the most benefited by the ratification of the present Constitution. They were accordingly the first to adopt it. And they had uniformly found it a system, not of oppression, but of protection; and that protection would never, with his consent, be withdrawn from them.

In the course of his remarks, Mr. M. animated on the proposition made some time since, in the State of Delaware, to abolish the sovereignty of that State, and to merge it in that of an adjoining State.

Mr. BAYARD said, that he would furnish the House with some information respecting the proposition alluded to by the gentleman from New York. The proposition had been made. He would inform the House by whom it had been made, and what were the motives of those who made it. It had been made by a set of men once called Jacobins, then Democrats, and who now called themselves Republicans. It had been opposed by the Federalists, who, having most strength, frustrated it. It had been the desire and effort of the former description of men to get all the offices of the State into their hands, in which, having failed, they wished to be annexed to Pennsylvania, where democratic principles held sway.

Mr. VAN NESS.—After the great display of talents and abilities which we have had upon this subject, it is not to be expected that I shall rise to detain you more than a moment or two. I have attended, sir, with great deference and respect to all the gentlemen who have been up before me. I have heard an eloquent discussion, extremely entertaining and improving, but which, being rather too much confined to abstract principles, I think, has not been, in all its parts, immediately applicable to the question before us.

Gentlemen, sir, surely deserve credit for their candor, at least, who avow their motives to be local prepossessions or partialities. Considerations of this kind, particular attachments, appear, indeed, too operative in the present case; but, sir, I think, and I believe the sentiment is common to a majority of my colleagues, that we ought not to be wholly actuated by such motives. We have heard much upon the question, whether we are the Representatives of the States, or of the people of the different States, or whether we are the Representatives of the *whole people* of the United States? I must confess, sir, that the moment I enter this House, I consider myself as bound by general obligations towards the whole nation. My obligations and duties extend to all the United States; and in an

act of national legislation, I do not feel myself justified in consulting the particular and more immediate interest of any individual State, as contradistinguished from those of the others. No arrangements tending in its result to general benefit or advantage, ought to be varied or rejected, merely upon the ground of partial inconvenience to any particular State. This doctrine savors too much of the narrowness of that contracted illiberality which ought never to govern the mind of the Legislature. He should take extensive views of his subject, and be influenced only by a liberal policy.

Our Government is, after all, but a Government of experiment. We have opened a new road to ourselves, and are travelling on in it without knowing, to a certainty, what dangers may await us by the way. We should therefore, sir, proceed

“With cautious steps, and slow.”

We have been, in number, as low as 65. We have increased to 106. We now propose to rise to 141, (at 33,000;) that is, to considerably more than a duplication in about thirteen or fourteen years. Is not this, sir, advancing with pretty rapid strides? We all acknowledge we must stop somewhere.

There is a certain point, sir, that point where security and convenience for the transaction of public business meet, which we must not pass; if we do, we may find it difficult and embarrassing to recede. The constitution of human nature is such, that we are all gratified with the enjoyment and exercise of power. Tell the people they shall choose a certain number of Representatives; and if, upon experiment, it is found too large, you will find it difficult to diminish. We may hesitate, ourselves; we may not be disposed to lessen our chances of re-election. The people will hesitate to relinquish or abridge their right. And, sir, if once we have plunged ourselves into the dilemma of too numerous a representation, all the dreadful evils incident to such a state, and which, in a particular instance, excites the sensibility of some gentlemen, may be produced before a preventive can be adopted.

I confess, sir, I am one of those who, though differing in this particular from some gentlemen on this side of the House, whose opinions I highly respect, believe that an increase of members in a public body, to a certain extent, will increase the confidence of the community in that body. I do not mean, sir, such an increase as would exceed the line that I have before marked out, and which would expose the body alternately to ridicule and contempt, and to the dangerous operation of those licentious and ungovernable passions which frequently rage in society; but a moderate, reasonable augmentation, such a one as is calculated and adapted to secure the advantages incident to a wholesome deliberative assembly. I say, sir, in this case, an increase of members will generally increase confidence; and that confidence will be attended with a correspondent augmentation of powers, since the Representative body will have a greater influence over the physical force of the

community. It certainly, sir, appears to me that we ought to be extremely careful how we increase this power in the General Government. I believe, sir, with many others, that the influence of that Government has been bearing very hard upon the State governments. I believe, sir, whatever was the theory, that the practice, for some time, has tended to the substantial reduction of the State governments. I believe this has been the policy, and perhaps consistently with their principles, of some who have borne a conspicuous part in the administration of our Government; but, I flatter myself, the doctrine is exploded. In this view, that is, with respect to the State governments, I do not wish to see our own powers too much increased in the augmented numbers of this House.

I do not wish to see the State Governments, which I regard, indeed, as the pillars on which the fabric of our liberty rests, drawn within and swallowed up by the vortex of Federal power and influence. In another view, I do not wish to see the powers of this House imprudently enlarged, by too rapid an increase of members. The established theory of our Constitution I admire; I adore it; I believe the arrangement and distribution of power among the several branches of the Government is, in the main, salutary and correct. The equilibrium is well established, and may continue, whilst we are careful not to add too great a weight to either branch. But, sir, give this House too decided a preponderance, by means of its numbers, increased public confidence, and its consequent increased strength, and you hazard all.

We have seen melancholy instances of public evils resulting from struggles for power between different branches of the same political establishment. When, by accident, intrigue, or other circumstances, the physical power of a people has been more peculiarly and completely attached or devoted to one of those branches, we have frequently beheld it, conscious of this advantage, and under the influence of the most dangerous passions, sweep everything before it that opposed the gratification of those passions. I need not particularize; the history of every country that has ever enjoyed even a semblance of liberty, where there has been even a pretended division or distribution of power, will furnish us with cases. I do, therefore, feel a strong regard, a strong solicitude for the preservation and permanent firmness of the other branches of the present Government, whilst I am augmenting the numbers, confidence, and power, of this House. We are at present, and, by a moderate progression, will continue, a sufficient counterbalance to the other branches. If we practise upon the pure principles of the Constitution, I am persuaded it is so.

But, sir, it is said by some gentlemen, that the difference for which we contend, is trifling; neither on the score of economy, or any other, can it be material, &c. I confess, the number of fifteen, abstractedly, is not very large; but is not the addition of thirty-five members, which will be the increase, according to the ratio of 33,000, a considerable one? Is it not large, when compared to

the whole number of members? Will not this satisfy the country? When our population was three millions, our representation on this floor consisted of sixty-five members. When our population was nearly four millions, our number of Representatives here was one hundred and six, and so continued until the present day. When our population appears to be five millions, shall we call for one hundred and fifty-six, in direct violation of the principle heretofore established, instead of one hundred and forty-one, which will be the number afforded by the divisor of 33,000, and which is the number we ask for.

I repeat, sir, we must rest somewhere; we cannot long proceed at this rapid rate of increase, in direct proportion to our population. And it appears more reasonable, more politic, gradually to lessen our proportional increase, until we arrive, by a moderate progression, at an ultimatum, than to proceed in full career, and with an intemperate zeal for increase; and thus presently do violence to the habits and expectations of the country, by a sudden, an abrupt discontinuance.

I would therefore prefer even a larger ratio than 33,000 to 30,000, but this not appearing desirable to any part of the House, I shall adhere to *that* number which appears to me most proper and consistent of any that has been under consideration. As I have before said, I respect the feelings and sentiments of the public upon every occasion, particularly upon the present, when we are upon a subject more interesting to them than any other object of legislation. They are generally right. Taking, necessarily, a strong interest in public affairs, after having bestowed due deliberation and reflection upon a subject, they arrive at the truth. This remark applies to an enlightened country, a country like our own. I consider their opinions as unequivocally expressed, in the first instance, by our Constitution, which directs that the number of Representatives shall not exceed one for every 30,000, even at the period of its formation, when our population was so much inferior to the present, clearly implying that even in *that* state of our population, this ratio was fully low enough; and, of course, that as the population advanced, the ratio or divisor ought to be increased: by the law of Congress passed very soon afterwards, and after the taking of the first census, which, pursuing this principle, raised the ratio to 33,000, by the recommendation of Congress, (two-thirds of both Houses concurring,) of an article, by way of amendment, to the Constitution, regulating, in effect, the ratio by the population. Here, indeed, some gentlemen triumphantly exclaim: "But that recommended article was rejected; it was not adopted by three-fourths of the States." Those gentlemen, however, should recollect that it was not rejected on account of its principle. It contained, probably through the inadvertence of its framers, a proposition which was inconsistent and contradictory in itself. By the terms of it, after the number of Representatives should have amounted to two hundred, the proportion was to have been so regulated that there were not to be less than two hundred members, nor more than one for every 30,000;

JANUARY, 1802.

Apportionment Bill.

H. OF R.

whereas it might have happened from the state of population, that taking the ratio (the least possible, according to the proposed article) the number of members would have fallen short of two hundred. Here, then, in the same breath, it was proposed that the number of members should *not* be less, and that it *might* be less than two hundred. To this intrinsic defect in the form, and not to the radical principle out of which it had grown, the proposed amendment owed its rejection. Notwithstanding all this imperfection of form, and perhaps substance, in which it was submitted, a number of States, though not, indeed, three-fourths, assented to it; and the concurrent evidence of the public sentiment in favor of the principle which I contend for, is the satisfaction of the country with the practice under that principle. I would, indeed, prefer a moderate increase of the ratio, as the most reasonable arrangement; but, since that seems not to be desirable by any part of this House, I shall adhere to 33,000; for to descend from that, appears, upon the ground of general principle, to be reversing the order of things, and to be in direct hostility to every idea of propriety.

The examples of particular States have been cited in favor of the more numerous representation; but I presume it will be recollected that, from the difference between the objects of State and those of Federal legislation, a correspondent difference may be proper in the relative proportion of representation. The one embraces the minute and particular interests of the different districts and parts of the individual States; the other, objects of a more general nature. In the one case, therefore, a more intimate local knowledge is requisite than in the other; and this is to be obtained only by a more numerous representation. In the State, however, which I have the honor to represent, after an experience of twenty-four years, and upon the most mature deliberation, they have lately reduced their limitation to one hundred and fifty members, in the popular branch, their present number consisting of a few more than one hundred. In the most important Eastern State, indeed, one of the most important in the Union, although they have a right to elect a number considerably larger than here contended for, still I believe that right, from political inconveniences, has frequently remained unexercised. And here, sir, permit me to add, (if I am mistaken the gentleman from that State will correct me,) that in the internal arrangement or apportionment of the Representatives from the different towns in that State, is observed the very principle for which we now contend; that, is an increase of ratio in some proportion to the increase of population or electors; and I think sixty members, whatever may be the whole eligible number which particular emergencies may draw forth, is a quorum to proceed to business. The same principle, that is, a proportionate increase of ratio, is adopted, I think, in New Hampshire. All the other States, perhaps one or two excepted, are below even our present number, in this popular branch; many of them very inferior indeed.

It has been strenuously urged and insisted upon, that every precaution ought to be taken to pre-

vent a combination of the larger States against the smaller. That the former would always feel a strong disposition to oppress, and, finally, to crush the other. But are not those fears chimerical? How are they warranted by experience in similar cases? Why, most of the small States, or nations, in the world, are brought into existence, and afterwards supported and reared by the jealousies and enmities of the large ones, towards each other. They are not jealous of the weak, but of the strong; and neither of them will voluntarily suffer a powerful rival to accumulate a degree of strength, dangerous to herself. Hence has, for a long time, proceeded the safety of most of the small States in the world—I might instance, among others, Holland and Switzerland, in Europe—I might call the attention of this House to our own political history. And has not even the State of Delaware discovered in her sister States the most friendly, the most conceding disposition, on all important occasions? They will acknowledge the fact. Now and then, indeed, a solitary instance of a foolish division occurs; but they are rare; ambition, rapacity—those very passions that move the plunderers to the measure, generally produce a difference about a division of the spoil.

The gentleman from Delaware contends, that he is the Representative of all the United States; and still, the moment he views the fraction likely to remain to *that* State, his feelings seem to whisper to him, "you are the Representative only of Delaware;" for, if that gentleman will, for a moment, examine the general result to all the small States, in case of the division of 30,000, he will find that the aggregate fraction is larger than in the case of 33,000, and not smaller, as some gentlemen have erroneously stated. Gentlemen are very fearful, indeed, that the four larger States will obtain a majority of votes on this floor. What, sir, are the gentlemen Republicans? Do they pretend that the people ought to be represented, and a majority of them, so represented, ought not to govern? and are they not willing to allow, if a majority of the Constitutional electors of the country are found within any particular States or parts of the Union, that they should also have a majority on this floor? This is proceeding upon the true principles of representation, which, I presume, they are not ready to contest. The majority of population is unquestionably contained in those States. But the danger is idle. Among other reasons, we need not now repeat the disproportionate weight which the small States have in the choice of the other branch of the Legislature and of the Executive.

Something has been said about economy; that the difference in expense would be trifling, &c. This opinion comes, in one instance particularly, from a respectable quarter; but when I reflect that, besides the additional consumption of time which must necessarily result, there will be a saving, in the course of ten years, of between two and three hundred thousand dollars in the immediate pay of the members, I cannot think so lightly of it. I think it would make a respectable item in a list of retrenchments. I would not, indeed,

sacrifice to this object any important advantages of a Representative Government; but there is no danger of such a consequence.

The gentleman from Delaware, in adverting to a struggle which, some time since, took place in his State, respecting a surrender of their sovereignty, acknowledged the fact, but very unnecessarily went on to tell us that the attempt was made by those who were formerly called Jacobins, afterwards Democrats, and who now call themselves Republicans. It is a little extraordinary, I confess, and only to be accounted for by local circumstances, unknown to us, that they should have had to contend in a struggle of this kind with a set of people formerly called Federalists; afterwards, Aristocrats; and now called Royalists. The opposition of this latter class cannot have been consistent with their usual principles; principles which, after full experience, have met with the public reprobation.

Mr. VAN RENSSLAER did not rise with a view to offer any arguments to the committee in expectation that any one member would be influenced thereby, so as to induce him to change his opinion different from what he had expressed on the floor of the House, or signified by a vote on the different questions that have been decided; but merely to express his opinion and to assign his reason for the vote he was about to give. When the question now before the Committee was first introduced into the House an honorable gentleman from Connecticut, (Mr. GRISWOLD,) moved to strike out the divisor 33,000, for the purpose of introducing 40,000; he voted for it, but the motion did not obtain. Circumstanced as he was, in the shape the business now stood before the Committee, he would vote for striking out 33,000, in hopes of obtaining a divisor of 40,000. In doing this he was actuated by the same motive that influenced him on a former occasion—that of opposing a too numerous representation. As to two of the reasons his colleague (Mr. VAN NESS) had offered in support of the present bill before the committee—the act of the House of Representatives, in the year 1793, fixing the ratio at 33,000, and the instance of the late convention in the State of New York lessening the State legislature—Mr. VAN R. said they made more in favor of the divisor of 40,000 than otherwise; for that the ratio of 33,000 for each member in 1793 was on three million, which made a very considerable augmentation to the House. In the present case the divisor ought to be received because we have at this time upwards of five million of souls. If, then, precedents and local considerations might be brought to bear on the present question, it certainly would give the preference to the divisor of 40,000 rather than 33,000.

Mr. S. SMITH, and Mr. LOWNDES followed, and assigned reasons in favor of the ratio of thirty-three thousand.

On the question being taken for striking out thirty-three, it was lost—yeas 42, nays 48.

Mr. DENNIS moved to strike out eight, the number of Representatives allotted to Maryland, and insert nine; which amendment had been ren-

dered necessary by the supplementary return received from Maryland.

On this motion a very desultory debate took place, which was twice interrupted by motions for the Committee to rise, which were both lost.

Much personal recrimination, chiefly on the charge of delay on the one side, and precipitation on the other, was exchanged.

The amendment was at last agreed to—yeas 57.

The Committee then rose and reported the bill as amended.

The House immediately took up the report of the Committee, agreed to the amendments, and ordered the bill to be engrossed for a third reading to-morrow.

WEDNESDAY, January 6.

The bill for the apportionment of Representatives coming up for its third reading, a motion was made to recommit the bill to the Committee of the Whole, that certain returns of the new census, not made precisely according to law, might receive legislative sanction before the apportionment among the several States should be made.

[The Marshal of South Carolina had not taken the oath prescribed by law, though he took an oath some days after he made the return, that it was faithfully made.]

Mr. RUTLEDGE said he would not struggle against the sense of the House when unequivocally expressed. It had been determined yesterday not to strike out, for the purpose of not diminishing the ratios in the bill; but it had not been determined that the ratio should not be increased. Thirty-five thousand would be the most convenient ratio for the State he had the honor to represent, and he thought that number would obtain if the question could fairly be brought before the House. As the bill was engrossed for a third reading, no alteration could be made in it without a recommitment. He hoped therefore the motion would pass.

Mr. ELMER would not be opposed to a recommitment if thirty-five would suit the States generally better than thirty-three, and there was a prospect of carrying that number; but he believed that number would be injurious to the small States; he should therefore be opposed to the motion.

Mr. SOUTHARD thought, as the subject had been long before the House and under solemn consideration, there was no occasion for the postponement. By increasing the ratio, Rhode Island and some other of the small States would be deprived of a member. This had heretofore been viewed as a very important consideration, and he hoped it would be so viewed, and that the bill would not be recommitment.

Mr. DENNIS said, one reason assigned for recommitting was, in order to pass a law to make the return from South Carolina valid. He believed this would legalize that return as much as if fifty bills should be passed on the subject. He was not for being over-scrupulous on such occasions.

Mr. BAYARD hoped the bill would be recommitment to a Committee of the Whole. It was very discernable that the House yesterday was not dis-

JANUARY, 1802.

Apportionment Bill.

H. OF R.

posed to hear arguments on the subject. He thought the efficacy of the law was at stake by a hasty determination. Irregularities have occurred in the returns in many instances, and it was improper to countenance such proceedings. In respect to South Carolina, the marshal had not taken an oath prior to his making the return, and yet gentlemen say it is valid, although the law requires an oath. If this is admitted, how can we expect that such requisitions will in future be attended to? If there be any solemnity in an oath, it is not to be so easily dispensed with, or hereafter there may be a general failure in complying with the laws respecting the census. By passing a law on the subject, that danger will be avoided. Without they proceeded in that way their laws would become mere waste paper, or dry leaves, that the winds would drive about in every direction.

There were perhaps but little hopes of success as he had brought forward the motion, yet he had been long enough in the House to know that they might vote one way to-day and differently to-morrow. Mr. B. was not confident that there might not be a change of opinion. Yesterday there was not sufficient calmness and sober judgment to hear arguments, but the House decided rather by the impulse of feeling. On the motion for recommitment he intended to call for the yeas and nays.

Mr. S. SMITH trusted that the House would not recommit the bill. They had with tranquillity listened yesterday to every word the gentleman from Delaware had to say on the occasion. They could not expect anything new on the subject. If anything new were possible he was persuaded the ingenuity of that gentleman would have brought it forward. It has been said the return from South Carolina is not according to law; but it should be remembered it was not the intention of the law to preclude any State from its proper number of representatives. There was a penalty upon the marshal if he did not comply with the law, but that was not to make the census ineffectual. He considered the return from New York a fair return, although it was not made within the time prescribed by law. The Marshal of South Carolina, though he did not take the oath before he made the return, yet in a few days he took an oath that it was faithfully made. The intention of the law was to give a fair ratio according to the returns, and any little informality did not invalidate them. He was surprised that a gentleman so correct as the gentleman from Delaware usually was, should charge the House with want of temper. Mr. S. had been long a member, and never saw the House preserve its temper better than it did yesterday; but he had on former occasions, when gentlemen of different political sentiments from the present majority possessed an ascendancy, seen a want of temper, such as the gentleman now without reason complained of.

Mr. GODDARD was unacquainted with the conduct of the House formerly. Yesterday he did think the conduct of the House was very strange when it was by some claimed to be the first republican representation under the new Constitution. Was there not a temper unbecoming the Legislature

of a great nation? Did not it appear so when a gentleman from Massachusetts (Mr. BACON,) whose age and steady sober habits he revered, rose in his place, and declared that, sooner than agree to any postponement, he would sit there for forty-eight hours? He thought such a temper did not become those who were about to correct the line of conduct pursued for twelve years past.

Are gentlemen afraid to trust to themselves, that they oppose the recommitment of the bill? Were they afraid to have the question fully discussed? He never did agree to vote for thirty thousand as the ratio. The arguments of the gentleman from Massachusetts, (Mr. EUSTIS,) struck him as forcible, that a principle appeared to be formerly fixed, that the ratio of representation should increase with our population. Mr. G. thought the bill ought to be recommitment, as the return from Tennessee was not before them, and no legal return from another State. The census was the basis of legislation on this subject. He wished that ratio to be fixed that would be best adapted to the interest of the United States; nor was he afraid to trust himself or others on this subject, which did not appear to be the case with those opposed to a recommitment.

Mr. RUTLEDGE thought that calmness did not exist yesterday, that should always be observed by the House. If one gentleman were willing to stay, others were not. He had heard of a permanent session of a Legislature, and of great corruption that ensued; and he did not wish to see the experiment here. It frequently occurred yesterday, that when gentlemen rose to deliver their sentiments, there were repeated calls for the question, and therefore gentlemen would not force themselves upon the House.

The question should be fully debated; this had not been the case. He allowed it had been sufficiently debated whether it should be thirty or thirty-three thousand, but not in respect to a higher number. He was for thirty-five thousand, and hoped it would obtain, not by any new light that would be thrown on the subject; but as several persons yesterday expressed themselves in favor of a higher number, he believed many would vote for thirty-five. He did not see why they should have the doors closed upon them, and be thus prohibited from further debate with respect to higher numbers. His State felt a deep interest in the subject, and he should vote for a recommitment.

Mr. BACON said, a principal reason urged for a commitment was the unbecoming and unmanly conduct of the House yesterday, and he had been held up as eminent in the unworthy affair. The gentleman from Connecticut, (Mr. GODDARD) had discovered in him a disposition unbecoming his age and the sober habits of his native State.

He confessed he did think it strange yesterday, when some gentlemen assigned as a reason for postponing the bill, that the last return from Maryland had not been compared with the former return, when they were told it was on the Clerk's table, where they might satisfy themselves by comparing it with the former, which was also there. He saw it with his own eyes. He did

suppose that something unfair must be intended by that objection being perseveringly urged, when every member could so easily satisfy himself.

Under these circumstances, he would submit it to the House, whether it was unbecoming his years, or the sober habits of his native State, to say that he would sit there till that time the next day, to hear any arguments the gentlemen could offer, that another day need not be lost on the subject.

Mr. T. MORRIS was in favor of the recommitment, not for the purpose of altering the ratio, which he considered as already fixed by the House, but for making the returns valid by law. Without doing this he believed they would establish a dangerous precedent.

Mr. SMILIE was not surprised to see the dissatisfaction that prevailed as to the decision made yesterday; it was the consequence of State interests and State attachments. He thought full time had been given for gentlemen to make up their minds upon different returns. The House, he contended, had a right to decide when the question should be put, and he thought it was then ripe for the question. The proceedings that morning were a mere trial of strength between the ratio of thirty and thirty-three thousand. Gentlemen want time, for what? To carry their point.

Mr. UPHAM believed the question had been decided, that a smaller number than thirty-three thousand should not be inserted. He wished the bill recommitted to try that point, yet he did not know that it would be in favor of New Hampshire to raise the ratio.

Mr. VAN NESS was more than ever convinced that local interest should not be attended to on this subject. He supposed that inflicting the penalty of the law on delinquent marshals would be the best mode of preventing future neglect. The temper of the House yesterday had been adverted to, and an expression made by a gentleman from Massachusetts had been spoken of with considerable animation. But was there not the same temper manifested by the minority? The gentleman from South Carolina had talked of permanent sessions, turning his eye, he supposed, across the Atlantic. He might have found them nearer home. Mr. VAN NESS had read of nocturnal sessions of that House, and also in the Parliament of the United Kingdom of Great Britain and Ireland. He did not, however, approve of nocturnal sessions.

Mr. DANA could not pretend to measure the minds of other gentlemen by his own, though some appeared to go on that plan. He could not wrap himself up in his own superlative intelligence and say that nothing new could be adduced; and he thought when such insinuations were thrown out, there was a want of that urbanity which should prevail in the House. He and his friends were charged with urging unnecessary delay; he felt no solicitude for any further discussion on the subject, but he did feel a solicitude as to the impropriety of their proceedings. Yesterday manifested, that public bodies are at times actuated by strong sympathy, and push forward

with intemperate zeal, and an obstinacy unfavorable to fair discussion.

Mr. DANA then detailed the necessary formalities in the returns; if they were not complied with the business ought not to be rashly passed over. That the House were to examine and determine on the validity of returns, and the mode should be uniform. Some of the returns on their face are liable to suspicion. If they received those returns, would it not be waiving the penalty laid on marshals; or be sufficient to induce the President to enter a *nolle prosequi*?

Mr. RANDOLPH perceived this business was likely to go out to the people in a shape calculated to make them believe a majority of this House were disposed to suppress discussion, and act on illegitimate documents. It was proper to inquire whether that was the fact. The passage of that bill, as the gentleman from Maryland (Mr. DENNIS) justly observed, makes the informal returns valid. They were compelled to act upon those returns or not at all. Gentlemen complained they could not get at the question of raising the ratio; this is not the fact. If the House refuse to recommit, does it not show clearly it is opposed to raising the ratio? As to obstinacy, might not the charge be recriminated? Did not reiterated motions for the Committee to rise show as much obstinacy as when gentlemen say they would decide before they rose? There were instances of sittings being continued until nine or ten o'clock, formerly, to decide questions. A gentleman from Connecticut says this disposition comes into existence when there is the first republican House of Representatives. Mr. R. denied that this was the first republican House. He was of opinion that the republican interest went out of that House when the British Treaty came in. After the law for carrying that treaty into effect passed, the gentlemen now in the minority gained an ascendancy. He was unwilling to admit that to be the first republican House of Representatives.

Mr. GODDARD explained, and stated that he said, "which some claimed to be the first republican House;" but it was far from being his opinion; he believed all former Houses had been republican, and he hoped this would show itself to be so too.

Mr. DENNIS thought they must receive the returns as they were. He was not for the present ratio; yet he thought it was fairly taken; still he was in favor of going into the Committee of the Whole to bring the question for a higher ratio fairly before the House. The arguments about the formality of returns proved too much. According to them a new census should be taken in South Carolina. They should not be so rigid in that House as in a court of justice; they had every reason to suppose the returns were properly taken. If the bill should be recommitted he believed he would move for thirty-seven instead of thirty-three thousand; and if he could not get that, he would be for thirty-five thousand.

Mr. PERKINS considered the subject of importance as it respected the regularity of proceeding, which was certainly a matter of very great importance. He would not say the returns ought

JANUARY, 1802.

Apportionment Bill.

H. OF R.

not to be admitted, but he would say they should only be admitted according to law. The law says they shall be made within a certain time; if they are not, a future law only can make them legal. Neither the Committee of the Whole nor the House could dispense with the law. Suppose it had been made the duty of the President to apportion the representation; would any gentleman in that case say he could receive any return of the census not made according to law? No; nor can this House. He wished a recommitment, to correct inaccuracies; and he believed it a great inaccuracy that this was not considered yesterday. He would have the penalties of the law inflicted upon the marshals, that a member need not in future have occasion, when the appointment was about to be made, to rise from his seat and call for an additional return.

Mr. NICHOLSON did not believe that passing over the informality of the returns in silence, as gentlemen call it, will exempt the marshals from the penalty, but he thought that passing a law to legalize the returns would screen them. Two reasons are assigned for going into Committee of the Whole again on this bill. One, to pass such laws; the other to scuffle again for the ratio, which he considered as fairly fixed yesterday. The great object of the gentleman from Delaware was to scuffle again for the ratio; by persevering he hoped to succeed: perseverance was very commendable, but he hoped that gentlemen would pardon the majority if they also persevered.

Mr. S. SMITH.—It has been observed on the proceedings of yesterday, that a fair, open discussion did not take place. He confessed an obstinacy was discovered. He had been the greater part of his life in minorities, and he never saw a minority discover so much obstinacy as yesterday. The observation of the gentleman from Massachusetts was not a relinquishment of his steady habits, but an evidence of them; and he believed that declaration obtained the vote. Calculation was a fair ground of decision on this subject, and it became some gentlemen to examine whether, in wishing to take a higher ratio, they were not actuated by a spirit of envy towards Rhode Island, that because she had lately taken a more proper bent in politics they wished to deprive her of one member. A higher ratio would also deprive republican Maryland of one member, and give a greater proportional weight over her to another State not republican.

Mr. GRISWOLD wondered much to hear on that floor such distinctions, that one State was republican and another was not; he thought they had it from very high authority, and such as that gentleman, he supposed, would greatly respect, that we were all republican, all federal.

Mr. G. believed there were many reasons for recommitting the bill. First, that a critical examination of the returns might be made. The law prescribed certain modes which, in many instances, the returning officers have deviated from. In the return from Tennessee, which he had before him, but which had never been printed for the use of the House, and which very few mem-

bers had ever seen, in that return there was no certificate that the marshal had taken any oath. He did not say there had been no oath on that occasion; but there was no evidence of it before that House. He did not think it was a correct mode of doing business to admit such informalities without any investigation.

He also wished the bill recommitment for the purpose of re-examining the ratio. He was originally for 40,000, and would still be for that number, as he believed the ratio should progress with the population of the country. In the nature of things we must advance the ratio at some period or other, and when shall we begin it if not now?

Mr. SOUTHARD spoke against recommitment. He thought it a dangerous and disorganizing attempt. They must act upon the evidence they had of the census, or not at all. Some gentlemen were in favor of raising the ratio, after it had been solemnly argued, and so much had been said in favor of a large representation. Did they wish now to retrace their steps after the subject had been decided, and enlarge the ratio, to the great injury of some of the small States?

Mr. DENNIS said, in these enlightened days of new-born republicanism, he did not expect to hear gentlemen charged with a desire to punish the citizens of Rhode Island and Maryland because those States had undergone a political regeneration. He could not imagine how his colleague (Mr. SMITH) could attribute such unworthy motives to him.

He had formerly stated why he varied his vote from 33 to 30; his great object was to strengthen the General Government, not, as some reporters had represented, to give that House greater weight than the Senate, for he had always believed that in a conflict between the different branches, that House would bring the Senate and President prostrate at its feet. His object in enlarging the representation was to enable its members to counteract the misrepresentations which have been industriously spread through the country, and which are calculated to destroy that Government, and erect the State government on its ruins. He was now inclined to meet the objection as to inconvenience in having a great number in that House. By raising the ratio to 37,000, it would give that House, he believed, about 120 members. The interest of Maryland was in favor of strengthening the Federal Government rather than increasing its own relative weight.

Mr. T. MORRIS gave an account of the manner in which the returns from New York and Maryland had been made. If the Marshal of the latter possessed one-tenth of the zeal that the gentleman from Maryland (Mr. SMITH) had, he might unintentionally make a mistake in his last return. Since that return, the gentleman from Maryland had argued the bill with a precipitancy that party calculations only could impel. He wished to be convinced that the first return was inaccurate. The addition of one member to any State was of importance to the Union.

Mr. EUSTIS was against recommitting the bill. Yesterday he voted for the Committee to rise, but

H. OF R.

Apportionment Bill.

JANUARY, 1802.

was now satisfied as to the returns from Maryland and South Carolina. Substance he thought should never be sacrificed to form. The principle he started upon was 33, and he still adhered to that. He thought it incorrect to say the powers of the House would be increased by increasing its members; vary the number as you please, the Constitutional powers remain the same. If the House decide against going into Committee, it is as much as saying they are satisfied with 33,000, the ratio fixed in the bill. He had no idea of crowding or bearing down the minority by the majority, nor did he think there was any ground for making such a charge. Gentlemen have a full opportunity now on the question of going into Committee to offer their arguments in favor of increasing the ratio, and he had no doubt they would be patiently heard.

Mr. BAYARD observed, that from the explanations made about ill-humor yesterday, it was possible he and his friends might mistake. Gentlemen say they were patient and willing to hear discussion. There had been imputations made by gentlemen yesterday and that day, that the motives by which the minority were influenced were neither fair nor honorable. Was that candid? When complaints were made of the conduct of the House yesterday, it was replied that the House were formerly guilty of similar impropriety. He would not defend the conduct of any former Congress; if it was wrong then, it would be equally wrong now. It would be more laudable to vary from it than to imitate it.

Mr. B. said there were many grounds upon which a recommitment could be urged. In point of fact the census was not such as to enable them to act. Mr. B. then gave a history of the returns, &c.

An honorable gentleman had said we should not sacrifice form to substance, but where, he asked, could the line be drawn? It might at length be urged, that the oath was entirely a matter of form, and therefore to be wholly dispensed with. One State might expect a cargo of United Irishmen, and another a cargo of a different description, to swell their population; they would, therefore, defer their return, disregarding anything and everything the law prescribed, as mere matter of form. Unless attention is paid to the forms prescribed, the nation is exposed to perpetual fraud. A return was not true or legal if not made within the time limited. Gentlemen say, pass this bill, and then make a law to legalize the returns; this, he said, to use a vulgar adage, would be putting the cart before the horse. As to inflicting a penalty upon the marshals, it could not be done if that House say the returns are legal.

Mr. B. said he did not expect to hear from a gentleman so urbane and well-bred as the one from Maryland, (Mr. SMITH,) arguments founded on the supposition of one State being republican and another not so. He hardly knew how to excuse the gentleman when he said the minority are not republicans. If he did mean to apply such an epithet to them, Mr. B. said he would oppose a flat denial to his assertion; he knew not what

pretensions there could be for saying so. Can it be alleged that we ever urged anything that was anti-republican? The gentleman must have forgot himself. He surely thought he was addressing a mob on some electioneering occasion. I may have mistaken the gentleman; there are many kinds of republicans. Bonaparte called himself a republican, although he was more absolute than Louis XIV, ruling the nation with a rod of iron. Bonaparte called himself a republican, to get the station he now holds. If, with a certain high authority, the gentleman does believe "we are all federalists and all republicans," he should define what species of republicanism he meant when he made use of the term. [Mr. B. was called to order here and in one or two other parts of his speech, but the Speaker declared him to be in order.]

Mr. B. proceeded, and observed he was about to say we (the minority) are not such republicans as Monsieur Bonaparte or Robespierre; we do not wish to make a general prostration of every civil institution, and of all respect for morals and religion.

As to this being the first republican House of Representatives, or republicanism going out when the British Treaty came in, he believed no such opinion was ever entertained until the country was infected with French principles. Then one party was called British and the other French. He did not know that we had suffered from that treaty, but we owed our war with France to it. It had been reiterated that there was an anti-republican party in that House. He was sorry to see the House divided by such artificial distinctions. He wished all would co-operate in dispelling such imputations, and allow that all are equally interested in promoting the welfare of our common country. He was sorry to hear that these explanations as regarded parties are matters of form, and as the gentleman from Massachusetts says these are of no importance, he hoped they would be discarded.

As to there being pertinacity or obstinacy in the minority in making motion after motion yesterday, he wanted no precedent for his justification; he was satisfied with himself, and would proceed in that line of conduct which he felt to be his duty. Must gentlemen be told they are guilty of obstinacy because they do not bow the neck or humble themselves in the dust to every measure of the majority? Or must they bear the charge of not being actuated by proper motives if they venture to differ from the majority? He hoped no one would be intimidated by such unjust imputations.

Mr. RUTLEDGE expressed his opinion in favor of the propriety of answering the imputations which had been made; but he hoped the business would cease there, and that they should not proceed with recrimination, which was calculated to do injury abroad.

Mr. S. SMITH replied to Mr. BAYARD. He was pleased that Mr. B. allowed he had behaved with politeness to gentlemen and avoided personalities. When he spoke of temper, it was not his own,

JANUARY, 1802.

Apportionment Bill.

H. OF R.

but that of the House, he praised. If he had attempted an eulogium on the mildness of his own temper it would have been very ill-judged; he believed few would have given credit to it. The gentleman from Delaware complains of party distinctions being made in this House; but he started the subject himself yesterday. A gentleman from New York, in the course of debate, had observed that it had been made a question in the State of Delaware whether sovereignty was of any real advantage, and whether they would not be in a better situation by being united to another State. The gentleman from Delaware rose in his place and said it was true such a question was agitated, but by whom? By a set of persons originally called jacobins, then democrats, and now republicans. What was their object? They had been long struggling to get the offices of that State into their hands, but failing in their attempt, they wished to throw themselves into the State of Pennsylvania. Mr. S. said the gentleman to be sure had a right thus to abuse his own constituents, and he had nothing to do with it; he could not at the time help regretting that the gentleman had not a colleague to answer him. If he had been his colleague he would have answered him in this way: Who opposed giving up the sovereignty of the State of Delaware? A set of men formerly called old torjes, next aristocrats, then monarchists, and now federalists. The gentleman from Delaware might in his way be a republican, and so might Bonaparte in his way. Mr. S. did not think we are all federalists and all republicans, though he believed the great mass of the people of the United States were so. He believed some leading characters in the country were led away by the intrigues and influence of Britain; while they could make a handle of French malconduct and French depredations, the people were led away by these characters; but when the days of delusion were over, the people returned to their sober senses. He had been forced into the observations he made relating to party.

Mr. BAYARD thought the gentleman from Maryland (Mr. SMITH) had betrayed sensibilities not justified by anything which had occurred. The gentleman must certainly have taken to himself what was designed for others, for he had not observed any personal remark which had been directed to his feelings. On the contrary he had thought the gentleman was treated with great decorum. But, said Mr. B., be the case as it will, the gentleman is not excusable for making a charge against me neither correct nor candid. He has stated that I have abused my constituents; there is not the smallest ground for such a statement. Mr. B. said he was incapable of abusing his constituents, or suffering them to be abused by others. He would take the liberty of examining the grounds of the gentleman's charge.

In the debate of a former day it had been insinuated that he was inimical to the State governments, and it was stated upon the occasion that an attempt had been made to abolish the sovereignty of his State, and to unite the territory with other States. There could have been no inten-

tion in stating the fact, but to support the insinuation of his hostility to the State governments. It therefore became him to disclose the whole truth, that the attempt referred to had been made, but that it was made by the party to which he was opposed, and repelled by the party to which he was attached.

The parties could not be discriminated without naming them, and as his opponents had been distinguished by several names, he had a right to suppose he should give the least offence by using them all, and allowing them to make their selection. The gentleman had said he had abused his constituents. Sir, said Mr. B., I believe there were very few of my constituents who co-operated in the project of pulling down the State government, for the purpose of submitting themselves to the yoke of the democracy of Pennsylvania. The gentleman might be assured that they who had sent him here were disposed to pull down no government.

But he would ask, where was the use in describing people by the names they had assumed themselves? Was it abusing the party to call them democrats? There had been a democratic society formed in our first city, and some men now high in office had become members of it. They were then not ashamed, but proud of the appellation of democrat. The name might not be deemed as honorable as formerly, but he had not been sensible before that it was considered as a term of abuse.

The gentleman had said a great deal about British influence. He does not believe that we are infected with it, or the people in general, but he believes there are leading characters in the country led away by the intrigues and influence of Britain. Sir, said Mr. B., I am ignorant of the sources of that gentleman's information; but if the gentleman ventures his assertion upon the ground of public news—upon the ground of what has been circulated in the newspapers and credited by certain people—give me leave to tell him that there is the same foundation to assert that some leading men in the country have been led away by French influence and French intrigues. He believed that France had employed more agents in the country than Britain, who had held out more allurements, and employed greater and more successful means to seduce the integrity of our citizens than British agents—at least such things had been said and believed by as many people as those who entertained the opinion expressed by the gentleman. For his own part he could hope that neither belief had any other foundation than the noise and clamor of party. He deprecated the consequences of distinction drawn from supposed connexions with foreign nations. If there must be party, let us divide as Americans, and not as French and English. The very distinction tends to embitter the spirit of party and weaken the attachment to our country. He was sorry that upon the floor of that House gentlemen should employ themselves in blowing the flame of civil discord. It would be a worthier office to harmonize and to remove the errors of public opinion,

H. OF R.

Apportionment Bill.

JANUARY, 1802.

which we know to be groundless, and which divide the country. He did not know that he had heretofore transgressed the doctrine he had inculcated, but if he had he would endeavor in future to practise it.

About half after 3 o'clock an adjournment was called for, but not agreed to.

Mr. ELMER advocated an immediate decision of the question; nor did he think that could be justly called obstinacy, as all the information wanted on the subject was before the House. He expressed his regret for the personal allusions that had been made.

Mr. GODDARD said he would consider it one of the most unfortunate incidents of his life if what he had said had necessarily given rise to the party allusions that had been made. He thought the House must have had a strong predisposition to the disease with which it had been that day infected if it had been excited by his observations.

Mr. G. was convinced that prejudices and passions crept imperceptibly upon the public mind. He had examined himself as to the charge made by the gentleman from Maryland, (Mr. SMITH,) and would repeat what he had before observed, that he was willing to deprive his own State of a Representative to benefit the Union. If the gentleman has not patriotism himself to act in that manner, he trusted it would be allowed a human mind might be actuated by such motives. As to being influenced by envy towards Rhode Island on account of its political regeneration, he assured the gentleman envy was the last passion that would rankle in his mind.

The question for recommitment was taken by yeas and nays. Yeas 34, nays 56, as follows:

YEAS—Willis Alston, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Peirce, Elias Perkins, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Nott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Isaac Van Horne.

And then the main question being put that the said bill do pass, it was resolved in the affirmative—yeas 85, nays 4, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, Thomas T. Davis, John Dennis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, William H. Hill, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, John Milledge, Samuel L. Mitchell, Thomas Moore, Lewis R. Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Joseph Pierce, Elias Perkins, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, William Shepard, John Smilie, Israel Smith, John C. Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Davenport, Thomas Morris, Killian K. Van Rensselaer, and Benjamin Walker.

THURSDAY, January 7.

A memorial of Evan Thomas and others, a committee appointed for Indian affairs by the yearly meeting of the people called Friends, held in the town of Baltimore, was presented to the House and read, praying the attention and interference of Congress to prevent the supply of spirituous liquors to the Indian tribes residing in the Territory of the United States Northwest of the river Ohio, by traders and settlers on the frontiers, and to introduce among the said Indian tribes the most simple and useful arts of civil life.—Referred to Mr. SAMUEL SMITH, Mr. GRISWOLD, Mr. DAVIS, Mr. HOGUE, and Mr. RANDOLPH, to examine and report their opinion thereupon to the House.

A memorial of Isaac Zane was presented to the House and read, praying that he may be permitted to retain the possession of a certain tract of land which was granted to him by the Wyandot nation of Indians, and which, by the cession of lands since made by the said nation, falls within the boundary of the United States.—Referred to Mr. JACKSON, Mr. FEARING, Mr. VAN HORNE, Mr. ELMER, and Mr. JOSIAH SMITH; to examine and report their opinion thereupon to the House.

A memorial of sundry delegates chosen by, and in behalf of, a number of aliens residing in the county of Chester, in the State of Pennsylvania, was presented to the House and read, praying a repeal or amendment of an act of Congress, passed on the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act sup-

JANUARY, 1802.

Standing Rules and Orders.

H. OF R.

plementary to, and to amend the act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject.'—Referred to the committee appointed, on the fifteenth ultimo, to prepare and bring in a bill or bills for a revision and amendment of the laws respecting naturalization.

The SPEAKER laid before the House a letter from the Secretary of State, enclosing a table showing the comparative duties paid in the ports of Great Britain on goods imported into Great Britain, in American, foreign, and British bottoms, since the 5th of January, 1798, so far as the same respects the commerce of the United States, made in pursuance of a resolution of this House of the 24th ultimo; which were read, and ordered to be referred to the Committee of the whole House on the state of the Union.

The SPEAKER laid before the House a letter from William Doughty, principal clerk in the office of the Treasurer of the United States, accompanying an account of Samuel Meredith, the late Treasurer, of receipts and expenditures of public moneys, from the first of July to the thirteenth of September, one thousand eight hundred and one; which was read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement exhibiting the amount of duties and drawbacks on goods, wares, and merchandise, imported into the United States, and exported therefrom, during the years one thousand seven hundred and ninety-eight, one thousand seven hundred and ninety-nine, and one thousand eight hundred, in pursuance of a standing order of the House of the third of March, one thousand seven hundred and ninety-seven; which were read, and ordered to lie on the table.

The House proceeded to consider the second and third resolutions reported, on the twenty-second ultimo, from the Committee of the whole House on the state of the Union; and the same being severally twice read were agreed to by the House, as follows:

Resolved, That it is expedient to inquire whether any, and if any, what, addition it may be necessary to make to the military stores of the United States.

Resolved, That a committee be appointed to inquire and report whether any, and, if any, what, amendments are necessary in the laws respecting the fortifications of the harbors of the United States.

Ordered, That Mr. GREGG, Mr. L. R. MORRIS, Mr. LOWNDES, Mr. NEWTON, and Mr. CUTTS, be appointed a committee, pursuant to the first resolution.

Ordered, That Mr. EUSTIS, Mr. DAVIS, Mr. WALKER, Mr. JOHN TALIAFERRO, Jr., and Mr. JONES, be appointed a committee, pursuant to the second resolution.

Mr. S. SMITH reported a bill for the protection of American commerce and seamen in the Mediterranean and adjoining seas, which empowers the President fully to equip and employ such vessels of the United States as he shall deem requisite;

that they be empowered to capture Tripolitan vessels; and that the President be authorized to commission private vessels, with power to capture vessels of Tripoli.

Read twice, and referred to a Committee of the Whole.

Mr. NICHOLSON presented a letter which he had received from the Governor of Maryland, enclosing a letter from the Commissioners of the City of Washington, addressed to the Legislature of that State, stating their present inability to defray the interest accruing on loans of about \$250,000, made by Maryland, and suggesting the expediency of that Legislature offering to receive from Congress, who had guaranteed the loans, six per cent. stock at par; the loans having been originally made in six per cents., with an engagement that repayment should be made in specie. Also, resolutions of the Legislature of Maryland, agreeing to the proposition of the Commissioners.—Referred to the Secretary of the Treasury.

STANDING RULES AND ORDERS.

The House went into Committee of the Whole on the standing rules of the House.

Mr. LEIB moved the addition of the following rule:

"The Speaker shall assign such places to the stenographers on the floor as shall not interfere with the convenience of the House."

Mr. LEIB prefaced his motion, by observing that, in the standing rules proposed, no provision appeared to be made for the admission of stenographers. They had heretofore been subject to the will of the Speaker. However great his respect for the present Speaker, he was of opinion, that they should not depend for their accommodation upon the will of any man; and he thought it became the House, on this occasion, to establish a precedent which would place those who took the debates above the caprice of any individual.

Mr. HUGER moved to amend the motion so as to read as follows:

"Stenographers shall be admitted, and the Speaker shall assign such places to them on the floor as shall not interfere with the convenience of the House."

Mr. LEIB agreed to this modification.

The motion was opposed by Mr. GRISWOLD, Mr. RUTLEDGE, Mr. VARNUM, Mr. HEMPHILL, Mr. T. MORRIS, Mr. EUSTIS, Mr. DANA, Mr. ELMER, and Mr. GODDARD; and supported by Mr. LEIB, Mr. S. SMITH, Mr. NICHOLSON, Mr. CLAIBORNE, Mr. SMILIE, Mr. HOLLAND, and Mr. SPRIGG.

Mr. HUGER opposed the original motion of Mr. LEIB, but supported the motion, as amended by himself.

The opponents of the motion declared, that it did not relate to substance, but merely to form; that it was allowed on all hands, that the debates should be taken, and that stenographers should, consequently, be admitted. But the single question was, how, and under what authority, they should be admitted. They remarked, that they had heretofore been admitted by the Speaker, under whose direction they had remained; that the

H. OF R.

Standing Rules and Orders.

JANUARY, 1802.

Speaker was the only proper authority under whose direction they ought still to remain; that, as the preservation of order and decorum rested with him, the stenographers, as well as other persons, should be permitted by him to enter the House, and be by him excluded, whenever, in his opinion, the order and a respect for the House required it. That, in case stenographers deputed themselves in a disrespectful manner, or grossly misrepresented the ideas of members, the Speaker was the only person who could effectually cure the evil; that there had been, and might again be, instances of such misconduct; that, in one case, a stenographer had entered the House in a state of intoxication; another case, a speech of a gentleman, from South Carolina, had been perversely misrepresented, and the stenographer had refused to correct his errors, for which he had been expelled the House; and that, in another case, the Speaker, considering himself as misrepresented, had expelled the stenographer.

Among the opponents of the motion, a great diversity of opinion prevailed. Mr. EUSTIS, Mr. VARNUM, and Mr. ELMER, objected to it, merely on the ground that it was improper to come to any solemn decision, which was the less necessary, as the stenographers already occupied convenient seats, from which there was no probability of their being extruded by the Speaker.

Those who supported the motion, considered its decision as involving an important point; a point no less important than, whether the debates of that House should be taken with accuracy, and published without fear or partiality. They averred it as a fact, that, owing to the unwarrantable conduct of the Speaker, this had heretofore, at many periods, not been the case. The public had sought information without being able to get it. It was true, that a stenographer had been expelled for publishing a speech of a gentleman from South Carolina; but it was not for misrepresenting that speech, but for faithfully publishing it; and in the other case alluded to, a stenographer had been expelled by the Speaker, for stating, with correctness, what the Speaker had himself said. These were alarming facts, not to be forgotten, and which claimed the interposition of the House. If stenographers should be guilty of indecorum, they could still, this rule notwithstanding, be expelled the House. It was acknowledged that the gentleman who at present filled the Chair, was entitled to the full confidence of the House, but it was dangerous to vest arbitrary power in the hands of any man, and it was peculiarly proper to provide in fair, for foul weather; and it was added, that though the proposed rule would not be obligatory upon a future House, yet it would form a precedent, which they might see fit to respect.

The motion, as modified by Mr. HUGER, was then agreed to—yeas 47, nays 32.

The Committee then rose, and reported the rules with the above amendment.

The amendment was immediately taken up; when,

Mr. RUTLEDGE moved to amend the report of the Committee, by making it read as follows:

“Stenographers may be admitted under the direction of the Speaker, who shall assign to them such places on the floor as shall not interfere with the convenience of the House.”

On this amendment a further debate ensued; after which, the yeas and nays were called, and were—yeas 27, nays 51, as follows:

YEAS—John Campbell, Samuel W. Dana, Franklin Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, William H. Hill, Benjamin Huger, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Henry Southard, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, John A. Hanna, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, Thomas Lowndes, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Sprigg, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Isaac Van Horne.

Another motion was then made and seconded to amend the said amendment, by inserting after the words, “stenographers shall,” the following words “until otherwise ordered by the House:”

And, the question being thereupon taken, it passed in the negative.

And the main question being put, that the House do agree to the amendment for an additional rule, as reported from the Committee of the whole House, it was resolved in the affirmative—yeas 47, nays 28, as follows:

YEAS—Willis Alston, John Archer, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jun., John Stewart, John Taliaferro, jr., David Thomas, John Thompson, Abram Trigg, John Trigg, and Isaac Van Horne.

NAYS—John Bacon, John Campbell, Samuel W. Dana, John Davenport, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, William B. Grove, Daniel Heister, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, James Mott, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stratton, Samuel Tenney, Thomas Til-

JANUARY, 1802.

Standing Rules and Orders.

H. OF R.

linghaast, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

Resolved, That this House doth agree to the said standing rules and orders, amended to read as followeth :

Rules and orders for conducting business of the House of Representatives of the United States.

First—Touching the duty of the Speaker.

He shall take the Chair every day at the hour to which the House shall have adjourned on the preceding day ; shall immediately call the members to order ; and, on the appearance of a quorum, shall cause the Journal of the preceding day to be read.

He shall preserve decorum and order ; may speak to points of order, in preference to other members, rising from his seat for that purpose, and shall decide questions of order, subject to an appeal to the House by any two members.

He shall rise to put a question, but may state it sitting.

Questions shall be distinctly put in this form, to wit : "As many as are of opinion that (as the case may be) say Ay ;" and, after the affirmative voice is expressed, "As many as are of a contrary opinion, say No." If the Speaker doubts, or a division be called for, the House shall divide ; those in the affirmative of the question shall first rise from their seats, and afterwards those in the negative. If the Speaker still doubts, or a count be required, the Speaker shall name two members, one from each side, to tell the numbers in the affirmative ; which being reported, he shall then name two others, one from each side, to tell those in the negative ; which being also reported, he shall rise, and state the decision to the House.

All committees shall be appointed by the Speaker, unless otherwise specially directed by the House, in which case they shall be appointed by ballot ; and if, upon such ballot, the number required shall not be elected by a majority of the votes given, the House shall proceed to a second ballot, in which a plurality of votes shall prevail ; and in case a greater number than are required to compose or complete the committee shall have an equal number of votes, the House shall proceed to a further ballot or ballots.

In all cases of ballot by the House, the Speaker shall vote ; in other cases he shall not vote, unless the House be equally divided, or unless his vote, if given to the majority, will make the division equal ; and, in case of such equal division, the question shall be lost.

All acts, addresses, and joint resolutions, shall be signed by the Speaker ; and all writs, warrants, or subpoenas, issued by order of the House, shall be under his hand and seal, attested by the Clerk.

In case of any disturbance or disorderly conduct in the gallery or lobby, the Speaker (or Chairman of the Committee of the whole House) shall have power to order the same to be cleared.

Stenographers shall be admitted ; and the Speaker shall assign such places to them on the floor, as shall not interfere with the convenience of the House.

Secondly—Of Decorum and Debate.

When any member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat, and respectfully address himself to Mr. Speaker.

If any member, in speaking, or otherwise, transgress the rules of the House, the Speaker shall, or any member may, call to order ; in which case, the member so called to order shall immediately sit down, unless per-

mitted to explain, and the House shall, if appealed to, decide on the case, but without debate. If there be no appeal, the decision of the Chair shall be submitted to. If the decision be in favor of the member called to order, he shall be at liberty to proceed ; if otherwise, and the case require it, he shall be liable to the censure of the House.

When two or more members happen to rise at once, the Speaker shall name the member who is first to speak.

No member shall speak more than twice to the same question, without leave of the House, nor more than once, until every member, choosing to speak, shall have spoken.

Whilst the Speaker is putting any question, or addressing the House, none shall walk out of, or across, the House ; nor, in such case, or when a member is speaking, shall entertain private discourse, nor, whilst a member is speaking, shall pass between him and the Chair.

No member shall vote on any question, in the event of which he is immediately and particularly interested ; or in any other case, where he was present when the question was put.

Upon a division and count of the House on any question, no member without the bar shall be counted.

Every member who shall be in the House when a question is put shall give his vote, unless the House, for special reasons, shall excuse him.

When a motion is made and seconded, it shall be stated by the Speaker, or, being in writing, it shall be handed to the Chair, and read aloud by the Clerk, before debated.

Every motion shall be reduced to writing, if the Speaker or any member desire it.

After a motion is stated by the Speaker, or read by the Clerk, it shall be deemed to be in the possession of the House, but may be withdrawn at any time before a decision or amendment.

When a question is under debate, no motion shall be received, unless to amend it, to commit it for the previous question, to postpone it to a day certain, or to adjourn.

A motion to adjourn shall be always in order, and shall be decided without debate.

The previous question shall be in this form, "Shall the main question be now put ?" It shall only be admitted when demanded by five members ; and, until it is decided, shall preclude all amendment and further debate of the main question.

On a previous question, no member shall speak more than once without leave.

Any member may call for the division of a question, where the sense will admit of it.

A motion for commitment, until it is decided, shall preclude all amendment of the main question.

Motions and reports may be committed at the pleasure of the House.

No new motion or proposition shall be admitted, under color of amendment, as a substitute for the motion or proposition under debate.

When a question has been once made and carried, in the affirmative, or negative, it shall be in order for any member of the majority to move for the reconsideration thereof.

When the reading of a paper is called for, and the same objected to by any member, it shall be determined by a vote of the House.

The unfinished business, in which the House was

engaged at the time of the last adjournment, shall have the preference in the orders of the day; and no motion on any other business shall be received, without special leave of the House, until the former is disposed of.

In all other cases of ballot, than for committees, a majority of the votes given shall be necessary to an election; and when there shall not be such majority on the first ballot, the ballot shall be repeated until a majority be obtained.

In all cases, when others than members of the House may be eligible, there shall be a previous nomination.

If a question depending be lost by adjournment of the House, and revived on the succeeding day, no member, who has spoken twice on the day preceding, shall be permitted again to speak without leave.

Every order, resolution, or vote, to which the concurrence of the Senate shall be necessary, shall be read to the House, and laid on the table, on a day preceding that in which the same shall be moved, unless the House shall otherwise expressly allow.

Petitions, memorials, and other papers, addressed to the House, shall be presented by the Speaker, or by a member in his place; a brief statement of the contents thereof shall verbally be made by the introducer, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise; but shall lie on the table, to be taken up in the order they were read.

Any fifteen members (including the Speaker, if there is one) shall be authorized to compel the attendance of absent members.

Upon calls of the House, or in taking the yeas and nays on any question, the names of the members shall be called alphabetically.

Any member may excuse himself from serving on any committee, at the time of his appointment, if he is then a member of two other committees.

No member shall absent himself from the service of the House, unless he have leave, or be sick and unable to attend.

Upon a call of the House, the names of the members shall be called over by the Clerk, and the absentees noted; after which the names of the absentees shall be again called over: the doors shall then be shut, and those for whom no excuse, or insufficient excuses are made, may, by order of the House, be taken into custody, as they appear, or may be sent for and taken into custody, wherever to be found, by special messengers to be appointed for that purpose.

When a member shall be discharged from custody, and admitted to his seat, the House shall determine whether such discharge shall be with, or without paying fees; and, in like manner, whether a delinquent member, taken into custody by a special messenger, shall, or shall not, be liable to defray the expense of said special messenger.

A Sergeant-at-Arms shall be appointed, to hold his office during the pleasure of the House, whose duty it shall be to attend the House during its sitting; to execute the commands of the House, from time to time; together with all such process, issued by authority thereof, as shall be directed to him by the Speaker.

The fees of the Sergeant-at-Arms shall be: for every arrest, the sum of two dollars; for each day's custody and release, one dollar; and for travelling expenses of himself, or a special messenger, going and returning, one-tenth of a dollar per mile.

Five standing committees shall be appointed at the commencement of each session, viz:

A Committee of Elections, to consist of seven members;

A Committee of Claims, to consist of seven members;

A Committee of Commerce and Manufactures, to consist of seven members;

A Committee of Ways and Means, to consist of seven members;

And a Committee of Revisal and Unfinished Business, to consist of three members.

It shall be the duty of the said Committee of Elections to examine and report upon the certificates of election, or other credentials, of the members returned to serve in this House, and to take into their consideration all such petitions, and other matters touching elections and returns, as shall or may be presented, or come in question, and be referred to them by the House.

It shall be the duty of the said Committee of Claims to take into consideration all such petitions, and matters or things touching claims and demands on the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

It shall be the duty of the said Committee of Commerce and Manufactures, to take into consideration all such petitions, and matters or things touching the commerce and manufactures of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report, from time to time, their opinion thereon.

It shall be the duty of the said Committee of Ways and Means to take into consideration all such reports of the Treasury Department, and all such propositions relative to the revenue, as may be referred to them by the House; to inquire into the state of the public debt, of the revenue, and of the expenditures, and to report, from time to time, their opinion thereon; to examine into the state of the several public departments, and particularly into the laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such laws; and, also, to report, from time to time, such provisions and arrangements, as may be necessary to add to the economy of the departments, and the accountability of their officers.

It shall be the duty of the said Committee of Revisal and Unfinished Business to examine and report what laws have expired, or are near expiring, and require to be revived or further continued; also, to examine and report, from the Journal of the last session, all such matters as were then depending and undetermined.

No committee shall sit during the sitting of the House without special leave.

The Clerk of the House shall take an oath for the true and faithful discharge of the duties of his office, to the best of his knowledge and abilities; and shall be deemed to continue in office until another be appointed.

It shall be the duty of the Clerk of the House, at the end of each session, to send a printed copy of the Journal thereof to the Executive, and to each branch of the Legislature, of every State.

Whenever confidential communications are received from the President of the United States, the House shall be cleared of all persons, except the members and the Clerk, and so continue during the reading of such communications, and (unless otherwise directed by the House) during all debates and proceedings to be had thereon. And when the Speaker, or any other mem-

JANUARY, 1802.

Standing Rules and Orders.

H. OF R.

ber, shall inform the House that he has communications to make, which he conceives ought to be kept secret, the House shall, in like manner, be cleared till the communication be made: the House shall then determine whether the matter communicated requires secrecy or not, and take order accordingly.

Thirdly.—Of Bills.

Every bill shall be introduced by motion for leave, or by an order of the House on the report of a committee, and, in either case, a committee to prepare the same shall be appointed. In cases of a general nature, one day's notice, at least, shall be given of the motion to bring in a bill; and every such motion may be committed.

Every bill shall receive three several readings in the House, previous to its passage; and all bills shall be despatched in order as they were introduced, unless where the House shall direct otherwise; but no bill shall be twice read on the same day, without special order of the House.

The first reading of the bill shall be for information, and if opposition be made to it the question shall be, "Shall the bill be rejected?" If no opposition be made, or if the question to reject be negatived, the bill shall go to its second reading without a question.

Upon the second reading of the bill, the Speaker shall state it as ready for commitment or engrossment; and if committed, then a question shall be, whether to a select or standing committee, or to a Committee of the whole House; if to a committee of the whole House, the House shall determine on what day. But if the bill be ordered to be engrossed, the House shall appoint the day when it shall be read the third time.

After commitment and report thereof to the House, a bill may be recommitted, or at any time before its passage.

All bills ordered to be engrossed, shall be executed in a fair round hand.

When a bill shall pass, it shall be certified by the Clerk, noting the day of its passing at the foot thereof.

Fourthly.—Of Committees of the Whole House.

It shall be a standing order of the day, throughout the session, for the House to resolve itself into a Committee of the whole House on the state of the Union.

In forming a Committee of the whole House, the Speaker shall leave his chair, and a Chairman to preside in committee shall be appointed by the Speaker.

Upon bills committed to a Committee of the whole House, the bill shall be first read throughout by the Clerk, and then again read and debated by clauses, leaving the preamble to be last considered; the body of the bill shall not be defaced or interlined; but all amendments, noting the page and line, shall be duly entered by the Clerk on a separate paper, as the same shall be agreed to by the committee, and so reported to the House. After report, the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken.

All amendments made to an original motion in committee shall be incorporated with the motion, and so reported.

All amendments made to a report committed to a Committee of the whole House shall be noted and reported as in the case of bills.

All questions, whether in committee, or in the House, shall be propounded in the order in which they were moved, except that, in filling up blanks, the largest sum and the longest time shall be first put.

No motion or proposition for a tax, or charge upon the people, shall be discussed the day in which it is made or offered, and every such proposition shall receive its first discussion in a Committee of the whole House.

No sum or quantum of tax or duty, voted by a Committee of the whole House, shall be increased in the House, until the motion or proposition for such increase shall be first discussed and voted in a Committee of the whole House; and so in respect to the time of its continuance.

All proceedings, touching appropriations of money, shall be first moved and discussed in a Committee of the whole House.

The rules of proceedings in the House shall be observed in committee, so far as they may be applicable, except the rule limiting the times of speaking.

That no person shall be admitted within the lobby, but members of the Senate, officers of the General or State Governments, foreign Ministers, and such as are introduced by the members of the House.

No standing rule or order of the House shall be rescinded without one day's notice being given of the motion therefor.

Joint rules and Orders of the Two Houses.

In every case of an amendment of a bill agreed to in one House, and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committees shall, at a convenient hour, to be agreed on by their Chairman, meet in the conference chamber, and state to each other verbally or in writing, as either shall chose, the reason of their respective Houses for and against the amendment, and confer freely thereon.

When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House, by the Doorkeeper, and shall be respectfully communicated to the Chair, by the person by whom it may be sent.

The same ceremony shall be observed, when a message shall be sent from the House of Representatives to the Senate.

Messages shall be sent by such persons, as a sense of propriety, in each House, may determine to be proper.

While bills are on their passage between the two Houses, they shall be on paper, and under the signature of the Secretary or Clerk of each House respectively.

After a bill shall have passed both Houses, it shall be duly enrolled on parchment, by the Clerk of the House of Representatives, or the Secretary of the Senate, as the bill may have originated in the one or the other House, before it shall be presented to the President of the United States.

When bills are enrolled, they shall be examined by a joint committee of one from the Senate, and two from the House of Representatives, appointed as a standing committee for that purpose, who shall carefully compare the enrolment with the engrossed bills, as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report, forthwith, to the respective Houses.

After examination and report, each bill shall be signed in the respective Houses, first by the Speaker of the House of Representatives, and then by the President of the Senate.

After a bill shall have thus been signed in each House, it shall be presented by the said committee to the President of the United States, for his approbation, it being first endorsed on the back of the roll, certifying in which

H. OF R.

Proceedings.

JANUARY, 1802.

House the same originated; which endorsement shall be signed by the Secretary or Clerk (as the case may be) of the House in which the same did originate, and shall be entered on the journal of each House. The said committee shall report the day of presentation to the President, which time shall also be carefully entered on the journal of each House.

All orders, resolutions, and votes, which are to be presented to the President of the United States, for his approbation, shall also, in the same manner, be previously enrolled, examined, and signed, and shall be presented in the same manner, and by the same committee, as provided in case of bills.

When the Senate and House of Representatives shall judge it proper to make a joint address to the President, it shall be presented to him in his audience chamber, by the President of the Senate, in the presence of the Speaker and both Houses.

FRIDAY, January 8.

Mr. MILLEDGE, from the Committee of Elections, reported that the committee had examined the certificates and other credentials of the members returned to serve in this House; and had agreed to a further report; which was read, and ordered to lie on the table.

On motion, it was

Resolved, That a committee be appointed to inquire and report whether any, and what, alterations are necessary to be made in the "Act respecting quarantine and health laws."

Ordered, That Mr. MITCHILL, Mr. EUSTIS, Mr. LEIB, Mr. ARCHER, and Mr. LOWNDES, be appointed a committee, pursuant to the said resolution.

On motion, it was

Resolved, That the President of the United States be, and he is hereby, requested to cause to be laid before this House an estimate of the expenses which are necessary for the carrying into effect the Convention between the United States of America and the French Republic.

Ordered, That Mr. RANDOLPH and Mr. BAYARD be appointed a committee to present the foregoing resolution to the President of the United States.

On motion, it was

Resolved, That the President of the United States be requested to cause to be laid before this House such information and documents as are in possession of the Department of State, relative to spoliations committed on the commerce of the United States, under Spanish authority; and, also, relative to the imprisonment of the American Consul at Saint Jago de Cuba.

Ordered, That Mr. BAYARD and Mr. RANDOLPH be appointed a committee to present the foregoing resolution to the President of the United States.

The House proceeded to consider the report of the committee appointed, on the fourteenth ultimo, "to inquire into the expediency or in expediency of giving further time to persons entitled to military land warrants to obtain and locate the same; and, also, to report what provision ought to be made by law to authorize the Secretary of War to issue military land warrants, and duplicates of

the same, where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud;" which lay on the table: Whereupon,

Ordered, That the farther consideration of the said report be postponed until Monday next.

The House resolved itself into a Committee of the whole House on the report of the Secretary of the Treasury, of the fourth instant, to whom was referred, on the fourteenth ultimo, the memorial of John Hobby, late Marshal of the district of Maine; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

MONDAY, January 11.

Another member, to wit: SETH HASTINGS, from Massachusetts, produced his credentials, was qualified, and took his seat in the House.

A petition of Thomas Bruff, of Joseph, in the State of Maryland, dentist, was presented to the House and read, praying the aid and patronage of Congress, to enable the petitioner to complete a machine for producing perpetual motion, or to perform continual revolutions without winding; the principles of which he discovered in the year one thousand seven hundred and ninety.—Referred to Mr. SOUTHARD, Mr. LOWNDES, and Mr. MITCHILL, the committee to whom was referred, on the fifth instant, the petition of Lewis Dupre, on the same subject.

On a motion made and seconded that the House do agree to an amendment to the eleventh rule of the joint rules and orders of the House, relating to "Committees of the whole House," so as the said rule shall read as follows:

"That no person shall be admitted within the bar of the lobby, but members of the Senate, officers of the General or State Governments, and foreign Ministers:"

And, on the question that the House do agree to the said amendment, it passed in the negative.

A Message was received from the President of the United States, transmitting a memorial and documents of the Commissioners of the City of Washington; which were referred to Mr. NICHOLSON, Mr. BAYARD, Mr. JOHN TALIAFERRO, jun., Mr. HASTINGS, and Mr. ALSTON.

The House again resolved itself into a Committee of the Whole House on the report of the Secretary of the Treasury, of the 4th instant, on the memorial of John Hobby, late Marshal of the district of Maine; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That it is expedient to appoint a committee to bring in a bill to authorize and direct the Marshal of the district of Maine to discharge from confinement John Hobby, late Marshal of the said district, on his making a surrender of all his property to the United States.

Ordered, That Mr. WADSWORTH, Mr. JOHN TRIGG, and Mr. STEWART, be appointed a committee pursuant to the said resolution.

Mr. JACKSON, from the committee to whom was

JANUARY, 1802.

Mediterranean Trade.

H. OF R.

referred, on the 7th instant, the memorial of Isaac Zane, made a report; which was read, and ordered to lie on the table.

Mr. GRISWOLD, from the committee to whom was referred, on the fourth instant, a letter from Samuel Dexter, late Secretary of War, made a report; which was read and considered: Whereupon,

Resolved, That the accounting officers of the Treasury be authorized to adjust the account of Samuel Dexter, Esq., for the expense which has arisen, or which may arise, in defending against the suit of Joseph Hodgson, brought on the covenants in the lease of a house improved for a War Office; and that the same be paid from the Treasury of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. GRISWOLD, Mr. HANNA, Mr. DENNIS, Mr. EUSTIS, and Mr. NICHOLSON, do prepare and bring in the same.

Mr. VARNUM, from the committee appointed, on the thirtieth ultimo, presented a bill fixing the Military Peace Establishment of the United States; which was read twice and committed to a Committee of the whole House on Thursday next.

The House resolved itself into a Committee of the whole House on the bill for the protection of the commerce and seamen of the United States, in the Mediterranean and adjoining seas; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

The House went into a Committee of the Whole on the resolutions of the Senate respecting Captain Sterret; when, after some consideration thereof, the Committee rose, and the House refused them liberty to sit again.

This was done at the suggestion of several members, that it would be the most proper course to refer the resolutions to a select committee, for the purpose of ascertaining the degree of honor, that it would be fit to bestow upon Captain Sterret, his officers, and crew. After this vote, a reference was made to a select committee.

MEDITERRANEAN TRADE.

Mr. RANDOLPH moved a resolution directing the Secretary of the Treasury to lay before the House an estimate of the value of the exports of the United States, for the last five years, to ports situated within the Straits of Gibraltar, discriminating articles of American growth from other productions.

Mr. RANDOLPH observed that he was aware of the inability of the Secretary to distinguish precisely the exports of the United States, carried to the Mediterranean ports of France and Spain, from those carried to their other ports. But still he thought it probable that the Secretary might be able to furnish information that would be valuable.

Mr. S. SMITH said that when the report was made by the Secretary, it would be a report of deception. A great part of our trade to the Mediterranean had been lopped off in consequence of the war.

Mr. SMITH afterwards remarked that on the report being made, he feared the inquiry would be,

whether we should give up the protection of the Mediterranean trade, or not. Gentlemen would probably go into a calculation of figures; and if the expense of protection appeared to be greater than the benefit of the trade, they might be for withholding protection. There was one description of trade to the Mediterranean, which we could obtain no estimate of, which was however very important—the tonnage of American shipping employed in going from European ports to the Mediterranean, and from the Mediterranean to European ports, and American shipping employed between the East Indies and the Mediterranean. This trade the Government was as much bound to protect, as it was bound to protect the landed interest of the country. Still Mr. S. knew not that it would be proper to oppose the passage of a resolution that asked for information.

Mr. SMILIE knew not what information we could receive; but he knew that whatever it should be, it could do no harm.

Mr. NICHOLSON remarked that the House would not be in a worse situation after the report than it was now. For himself, he was in a state of total ignorance, and he believed a large part of the House was also ignorant of the extent of our Mediterranean trade. It was impossible that the House could be deceived by the report; as, if any part of it should be calculated to deceive us, his colleague would be able to detect its errors. He had heard, and that too from commercial men, that our Mediterranean trade was not valuable, and not worth the expense of the squadron fitted out to protect it. He was at a loss to decide between these opinions and those of his colleague.

Mr. MITCHILL spoke in favor of the resolution.

Mr. GRISWOLD had no objection to obtaining the estimate, if desired by gentlemen; not that he supposed the report could present the information that was desired. With regard to our Mediterranean trade, it was well known, that lately, owing to our contest with Algiers, our fish and oil went in European bottoms, which could not be noticed in the Treasury statements, as they went first to other ports.

Mr. EUSTIS was perfectly willing to obtain the report, that the great increase in our trade to the Mediterranean should be seen; from which its great value would fully appear, and its claim to encouragement.

Mr. VARNUM suggested the propriety of a reference to a select committee, which, from the documents before the House, could select the desired information.

Mr. RUTLEDGE feared, that the call for this information would delay the passage of an important bill before the House for the protection of our Mediterranean commerce. He hoped, in order as promptly as possible to obtain information, the Secretary of the Treasury would be called upon for it. With respect to the protection of our trade in the Mediterranean, it was, in his opinion, unimportant what its extent was. We were bound to protect the commerce of our citizens in all its ramifications, whether great or small.

The resolution was then agreed to.

H. OF R.

Duty on Salt.

JANUARY, 1802.

TUESDAY, January 12.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act concerning the library for the use of both Houses of Congress," with several amendments; to which they desire the concurrence of this House.

Mr. J. C. SMITH, from the Committee of Claims, to whom was referred, on the fourteenth ultimo, the petition of Caleb Eddy, with instructions to inquire into the expediency of extending to the refugees from the British provinces of Canada and Nova Scotia a further time for exhibiting their claims for lands, under the "Act for the relief of the refugees from the British provinces of Canada and Nova Scotia," made a report; which was read, and ordered to lie on the table.

A Message was received from the President of the United States, transmitting a letter from the Secretary of State, containing an estimate of the expenses necessary for carrying into effect the Convention between the United States of America and the French Republic; which Message, and papers accompanying the same, were read, and ordered to be referred to the Committee of Ways and Means.

Mr. WADSWORTH, from the committee appointed yesterday, presented a bill authorizing the discharge of John Hobby, from his confinement; which was read twice and committed to a Committee of the whole House.

DUTY ON SALT.

Mr. BAYARD moved the following resolution:

"Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duty on salt."

On which motion, the previous question being called for by five members, to wit: "Shall the main question to agree to the said motion, be now put?"

And debate arising thereon, Mr. BAYARD, the member from Delaware, was called to order by Mr. RANDOLPH, one of the members from Virginia, on an opinion that he was debating the merits of the main question; and the SPEAKER having decided that the member from Delaware was in order, an appeal was made to the House from the decision of the Chair; and, on the question, "Is the member from Delaware in order?" it was resolved in the affirmative. And then, after farther debate, the previous question was taken, to wit, "Shall the main question to agree to the said motion be now put?" and passed in the negative—yeas 41, nays 49, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, William Hoge, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Smilie, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, George B. Upham, Killian K. Van

Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Andrew Gregg, Daniel Heister, Joseph Heister, William Helms, James Holland, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Joseph B. Varnum.

WEDNESDAY, January 13.

Ordered, That so much of the report of the Committee of Revisal and Unfinished Business, as relates to the claim of the legal representatives of Samuel Lapsley, deceased, be referred to the Committee of Claims.

On motion, it was

Ordered, That the Committee of Ways and Means be authorized to report by bill or bills, or otherwise, on all such matters, as shall, from time to time, be referred to them by the House.

A bill was reported which provides for indemnifying Samuel Dexter for any expenses that may be incurred by him in consequence of the suit instituted by Joseph Hodgson, and for any judgment that may be rendered in that suit. The bill was read twice, and referred to a Committee of the whole House.

The House went into Committee of the Whole on the bill for the relief of John Hobby.

Mr. GREGG proposed an amendment to the bill which would provide the same relief for a collector of excise in the county of Northampton, State of Pennsylvania, who was a delinquent for about two thousand dollars, and had been confined in jail for more than two years.

MESSRS. RUTLEDGE, MASON, and HUGER, opposed the amendment. They urged the propriety of deciding upon every case of this kind singly. They stated the importance of being very cautious in granting relief to the receivers of public money who embezzled or squandered it away.

The amendment was not agreed to.

MESSRS. STANLEY, BACON, and ELMENDORF, opposed the bill. They thought such defaulters should be rigorously dealt with, to deter others from violating the public confidence reposed in them.

MESSRS. DAVIS, PERKINS, WADSWORTH, and S. SMITH, advocated the bill.

The Committee rose, and reported the bill with amendments, which were agreed to, and it was ordered to be engrossed for a third reading to-morrow, forty-four voting in favor of it.

Mr. RANDOLPH, with leave, presented a bill to amend an act, entitled, "An act to lay and col-

JANUARY, 1802.

Proceedings.

H. OF R.

lect a direct tax;" which was read twice, and made the order of the day for Friday, and ordered to be printed.

This bill provides for the collection of the arrearages of that tax.

The House then took up the bill respecting the Library, as amended by the Senate: they agreed to some of the amendments and disagreed to others.

The Senate proposed that the Librarian should be appointed by the President, which the House did not agree to.

Mr. S. SMITH observed that the law regulating coin would expire at the end of this session of Congress, and that great inconvenience would be experienced by the banks and individuals; as foreign gold was not to be received in payment of duties, &c. He therefore moved that a committee be appointed to bring in a bill to continue in force the present law on the subject of foreign coin. The motion was agreed to, and then the House adjourned.

THURSDAY, January 14.

Another member, to wit: JOHN DAWSON, from Virginia, appeared, was qualified, and took his seat in the House.

An engrossed bill authorizing the discharge of John Hobby from his confinement was read the third time and passed.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill to prevent intrusions on the public lands, and for other purposes; which was read twice, and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Secretary of State, to whom was referred, on the 14th ultimo, the memorial of Philip Sloan; and, after some time spent therein, the Committee rose and reported thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That a committee be appointed to bring in a bill to authorize the payment of two thousand eight hundred dollars to Philip Sloan, from the Treasury of the United States, as a full compensation for his claims.

Ordered, That Mr. JONES, Mr. CLOPTON, and Mr. HUGER, be appointed a committee, pursuant to the said resolution.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making appropriations for the support of Government for the year one thousand eight hundred and two; which was read twice, and committed to a Committee of the whole House on the first Monday in February next.

The House proceeded to consider the report of the committee to whom was referred, on the 7th instant, the petition of Isaac Zane, which lay on the table: Whereupon,

Resolved, That a committee be appointed to bring in a bill authorizing the President of the United States to convey, in fee simple, to Isaac Zane, six sections of land, of one square mile

each, within the Northwestern Territory, on any lands not heretofore appropriated, and that the Indian title thereto has been extinguished.

Ordered, That Mr. JACKSON, Mr. FEARING, and Mr. VAN HORNE, be appointed a committee pursuant to the said resolution.

The SPEAKER laid before the House a letter from the Secretary of State, enclosing certain laws of the Northwestern and Indiana Territories of the United States, in pursuance of a resolution of this House, of the twenty-fourth ultimo; which were read and ordered to lie on the table.

The House went into a Committee of the Whole on the bill to amend the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

FRIDAY, January 15.

A petition of sundry citizens of the District of Columbia, in opposition to a petition from other citizens of the said District, presented on the twenty-third ultimo, "praying the aid and patronage of Congress in the establishment of a company for the building of a bridge across the Potomac river, from the western and southern extremity of the Maryland Avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the said river," was presented to the House and read.—Referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Ordered, That so much of the Message from the President of the United States, of the twenty-second ultimo, as relates to a schedule of the whole number of persons within the district of Tennessee, be printed for the use of the members.

A message from the Senate informed the House that the Senate insist on their amendments, disagreed to by this House, to the bill, entitled "An act concerning the library for the use of both Houses of Congress," and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers on their part.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, made report on the petition of Thomas K. Jones, of Boston. It was in favor of granting the drawback on ten pipes of wine re-exported.—Referred to the Committee of the Whole on Monday next.

Mr. JONES presented a petition from the assessors of the direct tax in the city and county of Philadelphia, praying for additional compensation.—Referred to a committee of three, viz: Mr. JONES, Mr. JOHN C. SMITH, and Mr. SMITH of New York.

Mr. GREGG moved that the return of the census of Tennessee, should be printed, to make the documents on that subject complete. Agreed to.

Mr. DAWSON (who took his seat yesterday) observed, that he understood some gentlemen were in doubt whether he was entitled to a seat. He

wished the Committee of Elections to make an early report, that if the employ with which he had been honored was incompatible with the character of a legislator, according to the Constitution which he had sworn to support, it would be so declared; and that the district which had chosen him might have an opportunity of again expressing their sentiments in the choice of a representative.

Mr. S. SMITH observed, there could be no difficulty in the gentleman's taking his seat until the Committee of Elections should make their report.

Mr. MILLEDGE, chairman of the Committee of Elections, mentioned that there were no credentials relative to Mr. DAWSON before the committee. Mr. M. had written to the Governor of Virginia, on Monday last, on the subject, and expected an answer by Monday next.

FUGITIVE BILL.

The House then resolved itself into Committee of the Whole on the bill respecting fugitives from justice, and persons escaping from the service of their masters.

The bill contemplates inflicting a penalty of five hundred dollars on any person harboring, concealing, or employing, runaway slaves. Every person employing a black person, unless he had a certificate with a county seal to it, or signed by a justice of the peace, would be liable to the penalty.

The debate on the bill was protracted until after three o'clock.

It was opposed by Messrs. VARNUM, BACON, T. MORRIS, EUSTIS, SMILIE, GODDARD, DANA, HEMPHILL, and SOUTHARD, who were in general unwilling that he who should employ a black person who was a stranger to him, and did not, within one month, publish in two newspapers an advertisement giving a description of the person so employed, should incur a penalty of five hundred dollars. They did not wish to compel every free person of color in the Middle and Eastern States to procure and carry about with them such a certificate.

The bill was supported by Messrs. NICHOLSON, HUGER, RUTLEDGE, VAN NESS, CLAIBORNE, and HOLLAND. They considered it a great injury, to the owners of that species of property, that runaways were employed in the Middle and Northern States, and even assisted in procuring a living. They stated that when slaves ran away and were not recovered it excited discontent among the rest. When they were caught and brought home they informed their comrades how well they were received and assisted, which excited a disposition in others to attempt escaping, and obliged their masters to use greater severity than they otherwise would. It was, they said, even on the score of humanity, good policy in those opposed to slavery to agree to this law.

A motion was made to strike out the second section of the bill, which would create therein and inflict the penalty for employing a person of color who had not a certificate of his freedom. The Committee were equally divided, thirty-eight voting for striking out and thirty-eight against; so the motion was not carried.

The Committee then rose, and a motion was made to adjourn, but did not succeed. The House

took up the amendments of the Committee, but, before they got through them, an adjournment was carried, and the House adjourned until Monday.

MONDAY, January 18.

The Speaker laid before the House a letter from Samuel Coleman, Assistant Clerk to the Council of the State of Virginia, enclosing a return of the election of JOHN DAWSON, to serve as a Representative for the said State, in the seventh Congress of the United States; which were read, and ordered to be referred to the Committee of Elections.

A petition of John Cleves Symmes was presented to the House and read, praying that Congress will accept of the release and relinquishment of the petitioner, to the United States, of all his legal and equitable claim, and colorable right, by patent or contract, statute or possession, whatsoever, to a certain quantity of land, lying north of the lands granted by the United States, or a contract with the petitioner and his associates, in the Territory Northwest of the river Ohio, for the reasons and on the terms and conditions therein specified.—Referred to the committee to whom was referred, on the eighth ultimo, the petition of James McCashen and others; and that Mr. D. HEISTER, and Mr. CLAIBORNE, be added to the said committee.

A petition of sundry citizens of the District of Columbia, in opposition to the prayer of a petition from sundry other citizens of the said district, presented on the twenty-ninth ultimo, for the erection of a bridge from the western and southern extremity of the Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the river Potomac, was presented to the House and read.—Referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

The SPEAKER laid before the House a letter and report from the Secretary of the Treasury, accompanying a statement of the value of the exports of the United States, to the ports of Italy, Gibraltar, and the Barbary Powers, for each of the five years preceding the thirtieth of September, one thousand eight hundred and one, in pursuance of the resolution of this House of the eleventh instant; which were read, and ordered to be referred to the Committee of the whole House to whom was committed, on the seventh instant, the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas.

The House resolved itself into a Committee of the whole House on the bill fixing the Military Peace Establishment of the United States; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

The House proceeded to consider the message from the Senate of the fifteenth instant, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act concerning the Library for the use of both Houses of Congress;" Whereupon,

JANUARY, 1802.

Fugitive Bill.

H. OF R.

Resolved, That this House doth insist on their disagreement to the fourth, sixth, and seventh amendments of the Senate, disagreed to by this House, and insisted on by the Senate to the said bill.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of the said amendments, and that Mr. BAYARD, Mr. NICHOLSON, and Mr. DAWSON, be appointed Managers at the said conference on the part of this House.

FUGITIVE BILL.

The House resumed the consideration of the amendments reported on the fifteenth instant from the Committee of the whole House to the bill to amend the act, entitled, "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and the same being severally twice read, were, on the question being put thereon, agreed to by the House.

The said bill was then further amended at the Clerk's table: and on the question that the said bill, with the amendments, be engrossed and read the third time, it passed in the negative—yeas 43, nays 46, as follows:

YEAS—Willis Alston, James A. Bayard, William Butler, Thomas Claiborne, Matthew Clay, John Clapton, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, William Barry Grove, Daniel Heister, Joseph Heister, John Holland, Benjamin Huger, George Jackson, Charles Johnson, Michael Leib, Thomas Lowndes, John Milledge, Thomas Moore, Lewis R. Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Rutledge, John Smith, of Virginia, Samuel Smith, Richard Sprigg, Richard Stanford, John Stratton, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness.

NAYS—John Bacon, Phaniel Bishop, Robert Brown, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, John A. Hanna, Seth Hastings, Joseph Hemphill, Archibald Henderson, William Hoge, Ebenezer Mattoon, Samuel L. Mitchell, Thomas Morris, Jas. Mott, Joseph Pierce, Elias Perkins, Nathan Read, William Shepard, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Josiah Smith, Henry Southard, John Stanley, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Kilian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, Henry Woods.

And so the said bill was rejected.

TUESDAY, January 19.

A memorial of Fulwar Skipwith, late Consul General of the United States at Paris, was presented to the House and read, praying the liquidation and settlement of a claim for official services rendered, and advances of money made by the memorialist, in the capacity aforesaid, on account of the United States.—Referred to the Secretary of State, with instruction to examine the

same, and report his opinion thereupon to the House.

A petition of sundry inhabitants of the city of Washington, in the District of Columbia, was presented to the House and read, praying the aid and patronage of Congress to enable the petitioners and others to connect the waters of the river Potomac and the Eastern Branch of the said river, by opening and completing a canal along the Tiber creek, through the low ground at the foot of the Capitol Hill, in said city.—Referred to the Committee appointed on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Mr. STANLEY, one of the members from North Carolina, presented to the House a petition of Memucan Hunt, William Polk, and Pleasant Henderson, for themselves and others, addressed to the General Assembly of that State; also, sundry resolutions of the said Assembly, respecting a claim of the petitioners for the value of certain lands in the State of Tennessee, held under grants from the State of North Carolina, prior to the cession of the said lands to the United States, accepted by an act of Congress passed the second day of April, one thousand seven hundred and ninety; which were received and read: Whereupon,

Ordered, That the said petition and resolutions be referred to Mr. STANLEY, Mr. RUTLEDGE, Mr. DAWSON, Mr. DICKSON, and Mr. FOWLER; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his report on a letter from the Governor of Maryland, and sundry documents respecting loans from the said State to the Commissioners of the City of Washington, referred to him by order of the House, on the seventh instant; which were read, and ordered to be referred to the committee appointed on the eleventh instant, to whom was referred a Message of the President of the United States on the same subject.

Mr. TALLMADGE, from the committee to whom were referred, on the eleventh instant, the resolutions of the Senate, "in respect to Lieutenant Sterret, the officers, and crew, of the United States schooner Enterprize," made a report; which was read, and, together with the said resolutions, ordered to be committed to a Committee of the whole House to-morrow.

The House again resolved itself into a Committee of the whole House on the bill fixing the Military Peace Establishment of the United States; and, after some time spent therein, the Committee rose and reported several amendments thereto.

Ordered, That the said bill, with the amendments, do lie on the table.

WEDNESDAY, January 20.

A petition of sundry citizens of the District of Columbia, in opposition to the prayer of a petition

from sundry other citizens of the said District, presented on the twenty-ninth ultimo, "that a bridge may be erected from the western and southern extremity of Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the river Potomac," was presented to the House and read.—Referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations are necessary in the existing government and laws of the District of Columbia.

Mr. FEARING presented a law of the Legislature of the Territory Northwest of the Ohio, for the division of that Territory into three Governments, the Western, Middle, and Eastern, and pointing out the boundaries for States as laid out by the Old Confederation. Mr. F. moved to refer it to a select committee.

Mr. GILES observed, that the law would place the people of that Territory in a very disagreeable situation, and it should be decided as early as possible. He had in his hands petitions signed by above one thousand inhabitants of that Territory against the law. The law would remove them further from a State government. Its only tendency would be to perpetuate the office of Governor and the Territorial Legislature.

Mr. DAVIS moved to refer the law to a Committee of the whole House, as it would give an earlier decision to the subject.

It was referred to the Committee of the Whole, made the order of the day for to-morrow, and ordered to be printed.

Mr. GILES then presented the petitions he alluded to, and moved a reference to the Committee of the Whole, and one of them to be printed; which was agreed to.

Mr. DAVIS mentioned that he had received a communication from the Treasury Department respecting the location of military land warrants, which he moved should be printed; agreed to.

Mr. JACKSON moved that the ordinance of 1787, respecting the Northwestern Territory, should be printed for the use of the members; which was agreed to.

On motion, it was

Resolved, That the Committee of Ways and Means be authorized to cause to be printed under their inspection, all such reports and documents, touching the matters referred to them, as may appear necessary to the committee, previous to the presentation of the same to the House.

MILITARY PEACE ESTABLISHMENT.

The House then took up the amendments to the bill fixing the Military Peace Establishment.

Mr. BAYARD moved to strike out the office of Brigadier General. He said there could not be any occasion for such an officer, as the men were scattered over the whole extent of our frontiers and Atlantic coast, and placed in small divisions.

This brought on a debate which was continued until after three o'clock.

The question was taken by yeas and nays for striking out—36 against it, 54 for it, as follows:

YEAS—Willis Alston, James A. Bayard, William

Butler, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Lewis R. Morris, Joseph H. Nicholson, Elias Perkins, John Randolph, jr., John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, John P. Van Ness, and Lemuel Williams.

NAYS—John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, John Campbell, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, William Hoge, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, James Mott, Anthony Newton, jr., Joseph Pierce, Nathan Reid, John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, and Henry Woods.

Mr. BAYARD moved to strike out the office of Colonel, and add one to the number of Majors; but it was not agreed to.

The bill proposed to give those officers who should be deranged, three months' pay when they were dismissed from the service.

Mr. GRISWOLD moved to strike out "three months," that a greater compensation might be given to those who have grown gray in the service of their country. He thought more was due to them than what the bill proposed to allow.

Mr. VARNUM said, his own opinion was in favor of a greater compensation; but he owed it to a majority of that House to yield his opinion to what they had fixed it at. He said there was nothing due to those officers, as nothing had been promised them.

Mr. MITCHELL was in favor of striking out, for the purpose of inserting a compensation proportionate to the length of time the officers had been in service.

Mr. BACON differed as to the principle laid down by gentlemen. When officers were wanted there was great competition for the appointments. They were desirous to receive the pay and emoluments. He did not think there was anything due to them.

Mr. S. SMITH was for pursuing some system in this business, and keeping to a uniform principle. When a reduction was made in 1796, six months' pay and subsistence was granted. He would be in favor of that at this time.

Mr. DANA believed those officers accepted their appointments under an idea of its being the permanent Peace Establishment, and therefore something was due to them when dismissed from the public service.

JANUARY, 1802.

Military Peace Establishment.

H. OF R.

Mr. SMILIE said, they knew the terms on which they entered the service, and they entered voluntarily. How could anything, then, be due to them? It would be more proper to give the men something when disbanded than to provide for the officers. It was not long since that about forty were wanted, and there were thirteen hundred applications. Men could not always be obtained. When the ten regiments were ordered to be raised, the officers were soon obtained; but, after recruiting a long time, the proper number of men could not be procured.

The question for striking out was taken by yeas and nays—for it 26, against it 56, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, William Eustis, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, Charles Johnson, Thomas Lowndes, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, Elias Perkins, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Benjamin Walker, and Lemuel Williams.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmen-dorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Seth Hastings, Daniel Heister, Joseph Heister, William Helms, William Hoge, David Holmes, George Jackson, William Jones, Michael Leib, Ebenezer Mattoon, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stewart, John Taliaferro, jr., Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Isaac Van Horne.

Mr. S. SMITH made a motion to raise it to the same as was granted in 1796.

Mr. EUSTIS advocated it, but it was not carried, there being 26 for it, and 45 against it.

Mr. S. SMITH moved a section repealing former laws that came within the purview of this.

Mr. BAYARD did not think such a section necessary; at any rate, he wished time to consider what laws came within the purview of this, before he agreed to it.

Mr. GILES advocated the section; which was agreed to.

The bill was ordered to be engrossed for a third reading to-morrow.

THURSDAY, January 21.

A petition of Anthony Addison, of Prince George's county, in the State of Maryland, was presented to the House and read, praying that he may be authorized by law to erect a bridge over the Eastern Branch of the river Potomac, at, or near the place where a ferry belonging to the petitioner is now kept.

Ordered, That the said petition be referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

On motion of Mr. NICHOLSON, it was

Resolved, That the committee appointed, on the fourteenth ultimo, "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons intrusted with public money," be, and they are, authorized to cause to be printed, for the use of the members of the House, such papers and documents relating to the subjects of their inquiry as they may think necessary.

Mr. DAVENPORT, from the Committee of Revision and Unfinished Business, presented a bill to continue in force an act supplementary to an act, entitled "An act regulating foreign coins, and for other purposes;" which was read twice and committed to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate adhere to their fourth and sixth amendments, and recede from their seventh amendment to the bill, entitled "An act concerning the Library for the use of both Houses of Congress," on their disagreement to which this House hath insisted.

On motion, it was

Ordered, That Mr. NICHOLSON be excused from serving on the committee appointed, on the fourth instant, "to inquire whether any, and what, alteration should be made in the Judicial Establishment of the United States; also, to report a provision for securing the impartial selection of juries in the courts of the United States," and that Mr. GILES be appointed of the said committee, in his stead.

Mr. BAYARD, from the managers appointed on the part of this House to attend a conference with the Senate on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act concerning the Library for the use of both Houses of Congress," made a report; which was read and considered: Whereupon,

Resolved, That this House doth recede from their disagreement to the fourth and sixth amendments, adhered to by the Senate to the said bill.

MILITARY PEACE ESTABLISHMENT.

An engrossed bill fixing the Military Peace Establishment of the United States was read the third time.

Mr. BAYARD observed that he should vote for the bill, because he thought it better than the former system, and it would be of much saving as to expense. He was, however, very far from being pleased with a part of that bill, that part relating

to the Brigadier General and his aid de camp. This office he knew to be a perfect sinecure; no such officer was necessary; he could have no duties to perform. He would not, however, vote against the whole bill on account of this.

Mr. RUTLEDGE.—The first section was very disagreeable to him, as it went to the establishment of a perfect sinecure. He was willing to do homage to the merit of the officer who was to benefit; but he rather thought it would be more consonant with justice, if money must be needlessly sported with, to suffer such money to be given to those who have been long in service—some fifteen or twenty years—and who are now by this bill suddenly forced to quit their present, to seek some new way of obtaining a livelihood, in circumstances, many of them perhaps, not enviable.

Mr. R. was not pleased with the so great reduction of the artillery; he thought the retention of the artillery of more importance than that of the infantry. He had hoped the artillery would have been retained to keep in order the forts already built in different part of the United States; the small number remaining was quite incompetent to preserving them in order, or preserving them from decay. The Secretary of War mentions one fort in South Carolina. There are, sir, four forts in the harbor of Charleston alone, some of which must go to decay. He should vote for the bill, because it went to make great reductions of expense, which reductions circumstances now allow us to afford; but the sinecure was obnoxious to him, and he was not pleased with the reduction of the artillery.

On the question that the bill do pass, it was resolved in the affirmative—yeas 77, nays 12, as follows:

YEAS—Willis Alston, John Bacon, James A. Bayard, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, Thomas T. Davis, John Dawson, John Dennis, William Dickinson, Lucas El-mendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, William B. Grove, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Wm. Helms, Joseph Hemphill, Wm. H. Hill, William Hoge, James Holland, Benjamin Huger, George Jackson, Charles Johnson, Wm. Jones, Michael Leib, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph Pierce, Nathan Reed, John Rutledge, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Abram Trigg, John B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Davenport, Calvin Goddard, Roger Griswold, Archibald Henderson, Ebenezer Mattoon, Lewis R. Morris, Elias Perkins, John Randolph, jr., William Shepard, Josiah Smith, John Stratton, and Benjamin Walker.

MEDITERRANEAN TRADE.

The House again resolved itself into a Committee of the whole House on the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas.

Mr. BAYARD offered an amendment, the purport of which was to give to the President the power of granting letters of marque and reprisal, to affect Algiers and Tunis as well as Tripoli. Mr. B. thought that it would be unsafe to neglect a cautionary step like this, because there was great danger, from the similarity of religion and manners, of a union taking place between Tunis, Algiers, and Tripoli; they may be brought into the war with Tripoli against us. It would be a matter of prudence to be prepared.

Mr. DANA thought it very probable that further information would be received from the Barbary Powers, when we shall be the better enabled to judge what will be expedient. He did not like the appearance of the amendment; it seemed to invite war.

Mr. BAYARD considered there was a great difference between the Barbary Powers and civilized nations; it was on account of the perfidiousness of those Powers, that he wished it left to the direction of the President to exercise the power vested in him when he should think proper; there was no trusting to them. He wished the President to do this by the authority of law; this would prevent those doubts that have been expressed, by some, of the constitutionality of his measures the last Spring and Summer; though for his part he was disposed to approbate the proceedings of the Executive on that occasion. As to its having the appearance of threatening, he did not think so; nor did he believe it would have any effect on those Powers; he hardly believed that the Dey of Algiers ever read the acts of Congress.

Mr. DANA was opposed to considering the subject at present; he was for postponing till further information should be received.

Mr. GILES was against the amendment; he thought it had the appearance of inviting them to an attack, of challenging them to combat, of irritating and provoking them: he believed there would be ample time to act on this matter hereafter, when they would have a better knowledge of circumstances, and of what to expect.

Mr. BAYARD said he was by no means disposed to withdraw his motion. You are at war with one of these nations; the others are connected with them by their religion and habits, by their government some, and by their interest more. I have been told that there is no connexion between my amendment and the bill; but I am confident there is the same connexion that there is between Tripoli and the other Powers; and it is proper to extend the bill so as to embrace Tunis and Algiers, as well as Tripoli. The gentleman from Connecticut (Mr. DANA) says there are no doubts on his mind but that the President has a Constitutional right, as the Commander-in-chief of the Army and Navy, to do as he has done; but it should be remembered that many have doubts;

JANUARY, 1802.

Direct Taxes—Import Duties.

H. OF R.

and why should the gentleman be opposed to this amendment, which will preclude all doubt on the subject?

The amendment was not carried.

DIRECT TAXES.

The House went into Committee of the Whole, on the bill for amending the act for laying and collecting a direct tax.

The first section repeals the thirteenth section of the act of 1798, which prescribes that lands on which taxes remain unpaid for one year, shall be sold, subject to the right of redemption within two years after sale.

Mr. RANDOLPH stated that the provisions proposed to be repealed were unsusceptible of execution, inasmuch as the expenses of advertising required, exceeded in many cases, by four or five times, the amount of the tax, and which exceeded the per centage allowed; and inasmuch as no person would buy the land offered for sale, when he might be deprived of it by a redemption within two years.

Documents were read, which substantiated this statement.

Mr. S. SMITH opposed the repeal, as going to deprive the owners of lands of the right of redemption; which he deemed a valuable provision; without which the owners of land, particularly non-residents, would be deprived of their property, without a knowledge of the tax imposed, or being able, however desirous, to pay it.

Mr. RUTLEDGE also opposed the repeal, as imposing hardships upon those who have not paid the tax, which were not imposed upon those who have paid. He further stated that the non-payment in the Southern States had arisen, not from indisposition to pay, but from want of collectors to carry the law into execution; the compensation allowed having been so inadequate as in many districts to have disabled the Government from obtaining officers.

Messrs. GRISWOLD, MILLEDGE, STANLEY, and MORRIS, delivered their sentiments against the first section; when, on motion of Mr. MACON, the Committee rose, and asked leave to sit again, which was granted.

FRIDAY, January 22.

Another member to wit: ROBERT WILLIAMS, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, was read the third time, and passed.

Mr. JACKSON, from the committee appointed, on the fourteenth instant, presented a bill for the relief of Isaac Zane; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. JOHN C. SMILIE, from the Committee of Claims made report on the petition of William Kilty, Chief Justice of the District of Columbia.

The committee were of opinion that when he

accepted of his appointment he knew the duties required from him and the salary; they were not therefore in favor of increasing his salary.

The House concurred with the report, and leave was granted to withdraw the petition.

The House then went into Committee of the Whole on the unfinished business of yesterday, viz: a bill respecting the arrearages of the direct tax.

The first section of the bill was struck out, and Mr. ELMENDORF proposed some amendments.

Mr. GRISWOLD moved that the Committee should rise, that the bill might be referred back to a select committee, as it was difficult to settle the detail of a bill in the House. The Committee rose and were discharged. The bill was recommitted to the Committee of Ways and Means.

Mr. DENNIS proposed two resolutions, one respecting the establishment of a Chancery Court in the District of Columbia; the other relating to the public lots, squares, and streets, in the City of Washington, which had never yet been properly conveyed to the United States. There were also different plans of the city; he considered it important that public sanction should be given to the more correct one.

Mr. RANDOLPH observed that in the statement of indemnities under the treaty with France a large sum was put down for captures which were not brought into the United States, and which were condemned. Those made by the public armed vessels amounted to \$122,000. He wished to know how far the commanders of the public and other vessels were authorized by their instructions in making these captures. He proposed a resolution, nearly as follows: *Resolved*, That the Secretaries of State and the Treasury be directed to lay before this House copies of all the instructions given to every description of vessels to capture French vessels.

Mr. EUSTIS, from the select committee appointed on the subject, made a report which proposes to give four months' pay to the representatives of the officers, seamen, and marines, who were on board the Insurgent, and that the widows and children should have half pay for five years.

The resolutions were twice read, referred to a Committee of the whole House, and made the order of the day for Tuesday.

DUTIES ON IMPORTS.

Mr. RUTLEDGE rose and observed, that he intended to move a resolution calling the attention of the Committee of Ways and Means to the articles of brown sugar, bohea tea, and coffee. There was not a hut or log-house in this extensive country where these articles were not used. The duty on sugar and tea was fifty per cent. on the original cost, and coffee forty per cent. It was, he said, essentially necessary to reduce these high duties on what may fairly be termed necessities of life. The general peace in Europe would be followed by a reduction in the price of articles generally, and the earnings of labor in this country would not be so much as heretofore, as the price of produce would not be so high in the coming period as in the past.

From this view of the subject, it became them to look into the duties, and see whether they would not reduce those on the necessities of life. These articles, from the customs and habits of the poor, might be deemed as much the necessities of life as salt. Mr. R. was sorry the article of salt was not permitted to go to the Committee, when proposed the other day by his honorable friend from Delaware. When gentlemen said they were pleased to see it emanate from the quarter it did, he expected a unanimous vote in favor of the resolution respecting salt; he did not revert to what so suddenly took place when gentlemen immediately changed their minds.

Mr. R. said, what he was about to propose was a very favorite project with him, not only that it should go to the Committee, but be carried through the House.

We are told that such is the prosperity of the country that we may reduce even the taxes on luxuries—carriages, stamps, &c., have been particularly mentioned.

Mr. R. then read his resolution, as follows:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duties on brown sugar, coffee, and bohea tea."

There was a call for the question, and also that it should be taken by yeas and nays.

Mr. CLAIBORNE hoped the resolution would be treated as it deserved. He was surprised when he saw gentlemen who were formerly so fond of this mode of taxation, now so strenuous against it. He could not view the resolution in any other light than being introduced merely for popularity. He did not blame gentlemen for a wish to be popular; he liked the principle, but would vote against the resolution, and still he would maintain his popularity. Unless gentlemen would show him they could repeal the internal taxes, and part with some of the remaining revenues, and yet leave sufficient for the exigencies of Government, he would not agree to this resolution. Do gentlemen, who are for taking the funds from the present Administration, like it less than they did the last? He thought they did not. Mr. C. hoped the mover of the resolution would let it lie for consideration.

The question was again called for.

Mr. DANA hoped the proposition would be treated as it ought, and that it would not be scouted from the House without consideration, because it interfered with a favorite measure of some gentlemen.

Mr. D. said, upon general principles, he was in favor of the resolution going to the committee, that a fair comparison between the external and internal duties might be made. The duties on articles then before the House, were specific and not ad valorem duties, and they were laid with a view to war prices, and not what they would be in time of peace. Thirteen per cent. was about the average rate of ad valorem duties, and twenty per cent. the highest, and those were the articles consumed by the wealthy.

The report of the Secretary of the Treasury shows clearly that the price of the articles in the

resolution are nearly all doubled in war, and the duty is not to fall with the fall of prices in time of peace, yet the ad valorem duties come down with the prices of the articles.

Is there, said Mr. D., a single principle of finance in favor of the inequality? The same proportion of duties to prices should be observed in peace as in war, or it would be a great temptation to smuggle. Wicked people would engage in it, if strong temptation were thrown in their way. For this reason the duties should be reduced.

There was another point of view in which this subject should be considered—that the duties were paid chiefly by the commercial part of the community.

Mr. D. said he knew they were doomed to bear whatever certain gentlemen chose to lay upon them; but he would not be laughed out of the object which his duty pointed out to him. The articles in the resolution were more used in the Northern than Southern States, and were paid chiefly by the poor; therefore, the proposed inquiry was perfectly proper, unless gentlemen were determined the internal duties should first be repealed, before any consideration should take place, as to what duties were most proper to be reduced.

Mr. S. SMITH observed, that he did not rise to offer any arguments against the resolution, as he did not consider it intended for that House, but for the public. He was opposed to the resolution because the subject was already generally before the committee.

Mr. RUTLEDGE said, he would state, for the information of the gentleman from Maryland, that he might not hereafter misunderstand him, that he always had one meaning in what he said to that House. The good of the people was the object he had in view.

Mr. GRISWOLD said, according to his idea, this subject was not before the committee; they had the subject of duties generally before them, and would make a general report; but if these three articles are referred, they must report on them, and the House must decide specifically on these three. Were gentlemen afraid to let the House decide on these three?

He was at a loss to see any reasons for such an objection. The tax on sugar and coffee was fifty per cent. on the first cost, and on tea more. It becomes a matter of serious consideration, said Mr. G., whether you can retain the present taxes on them in time of peace, and prevent smuggling. It is a clear principle, that revenue is diminished when taxes are carried too far. When we connect with this truth, the fact that these articles are of prime necessity, and used principally by the poor, and it is determined the rich shall not pay for their carriages, &c., it cannot be denied that this resolution ought to go to the committee for their consideration?

Mr. DANA thought it prudent for the gentleman from Maryland to decline answering the arguments urged in favor of the resolution. The duty on the articles included in it amounted to \$220,000.

JANUARY, 1802.

Import Duties.

H. OF R.

Mr. BAYARD did not know but it would be giving the House unnecessary trouble to offer his sentiments on the resolution. As no arguments had been used against it, it was not to be presumed that a majority of the House could be opposed to it.

The object of the resolution was not to diminish but to make inquiry on the subject, and know whether the duty on certain articles, the consumers of which were but little able to pay it, might not be reduced. Will gentlemen scout it out of the House, as has been said, without deigning to answer the arguments in favor of the measure? It has been said, Mr. B. observed, that the subject is referred generally. The general reference is not for the committee to inquire into the propriety of reducing the duties, but to know whether the laws are sufficiently energetic to insure the collection of the duties, and to bring all the laws, on the subject of the revenue, into such a compass as to be more plain and simple. The general reference has nothing to do with the motion before the House.

The fortunate situation in which we find ourselves, enables gentlemen on all sides to agree in reducing the public expenses. By the bill reducing the Army \$450,000 will be saved, much also in the Naval department, and a vast deal in the Civil List, perhaps \$800,000. Is it not expedient to make inquiry on the subject? Must we confine ourselves to philosophic revenues alone, without any reference to what is useful? Because it has been mentioned by the President in his Message, that the taxes on luxuries may be reduced, shall we inquire as to the necessities of life and the interests of the country? Will not gentlemen give up their favorite project as to internal taxes, even for the welfare of the country?

It is now before the Committee of Ways and Means to consider whether the internal revenues may not be altogether abolished.

The resolution, Mr. B. said, which he had the honor to propose a few days ago, was to have the salt tax compared with the tax on carriages, and thus determine which would be the most beneficial to the country, to be reduced or abolished. Gentlemen gave the subject the go-by, by the previous question. Now they are prepared to vote on this without saying a word. Mr. B. trusted the motives of his friends were as pure and patriotic as theirs. He said, we wish the subject to go to the committee that the necessary burdens might be placed on those who were best able to bear them.

Mr. GODDARD alluded to the observation which was made, as to the motive in bringing forward this resolution, that it was not for that House but the public, and said we must be permitted to attend to the interest of our constituents. He thought there was more cause for alarm when gentlemen said, and it would go forth to the world, that the subject of the resolution was already before the committee. It amounts to saying you shall not direct the committee to any particular articles, because they have the general reference before them. The committee, under the general reference, are to inquire respecting the duties, as to

their effect on finance, not as to the burdens they impose on the people. Those who oppose the reference of the resolution offered by the gentleman from South Carolina, do not treat with proper respect those who complain of grievances.

Mr. SMILIE said, gentlemen complain that their arguments are not answered. He thought there was not a new idea started in the course of the debate; perhaps there could not be anything said either for or against the resolution, different from what was said when the resolution respecting salt was before the House. It would, therefore, be a mere waste of time to answer gentlemen.

Mr. CLAIBORNE never thought it a waste of time to debate on any subject that came before the House. He continued: I said it had a tendency to popularity; that was an inadvertent expression. I did not mean to propose that the motion should be scouted from the House; I would never treat gentlemen with such disrespect. I asked the mover to let it lie on the table until we repealed the excise. When we have done that I will agree to this resolution, if we can spare any more from our revenue.

Mr. RUTLEDGE replied to the gentleman from Pennsylvania, (Mr. SMILIE,) as to the charge that there were no new arguments that day. Mr. R. said, either the gentleman from Pennsylvania has not heard the arguments that have been used this day, or I did not hear those which were used when the resolutions relating to salt were before the House. He alleged, nothing new has been said. I think that nothing has been said analogous to what was expressed about the salt tax. The articles in this resolution are, of all the foreign productions, most consumed; they are most generally consumed; indeed, almost exclusively, by the poor; whereas, salt is an article of general consumption, and but a small proportion by the poor. Are not these facts? Look at the report of the Secretary of the Treasury. The duty on brown sugar is $2\frac{1}{2}$ cents per pound, or \$2 50 per cwt., and the original cost is not more than six dollars or $6\frac{1}{2}$ per cwt. The amount of duty on brown sugar is \$903,000 annually. This shows how much is consumed, and that, too, by the poor; and yet gentlemen will not let the subject be referred to the committee.

Mr. R. adverted to the internal taxes which had been recommended to their consideration by the President in his message. He had a proper respect, he said, for the Chief Magistrate; he believed he had never treated him with disrespect, and trusted he never should.

Mr. R. continued.—Yet we are not to be stopped in this business, by being told the President has recommended a reduction of this tax, and he has not called our attention to that. It is a duty members owe their constituents, when the President has not called their attention to what bears heavy upon them, to bring it forward in this House. What! must the tax on carriages, stills, and the stamp tax, be abolished; and when we want equality of burdens only, and propose a question with that view, shall gentlemen who have a favorite project in view, say we will not hear

what you have to say ; we will not answer ? Will the country be satisfied with such procedure ?

Mr. R. had no objection to the internal taxes being discontinued, but he thought they should take a comprehensive view of the subject, and see whether that would be the most favorable to the country. It is a favorite project, he said, with some gentlemen, to abolish the stamp tax ; but, Mr. R. said, his constituents did not feel it ; there was not, perhaps, one of them who paid three dollars a year ; yet he had no objection to discontinuing it. Nor did they feel the tax on stills. He thought the House should not attend exclusively to taxes that bear hard only upon particular parts of the country. To refuse a reference was not treating gentlemen with that respect which was reciprocally due from members of that House.

Mr. SOUTHWARD wished to give his reasons for voting against the resolution. He was of the same opinion as to this, that he was when the resolution respecting salt was offered to the House, he believed it completely before the committee, and it was their duty, under the general reference, to take into view each article. It was, therefore, unnecessary for members to offer resolutions on each article of importation. It was erroneous to say coffee was exclusively used by the poor ; they scarcely used any ; and brown sugar was used with coffee, and but little of it consumed by the poor ; almost the whole of these articles were used by the rich. The taxes could never fall equally upon all parts of the country. In the carriage tax, New Jersey pays more than some large States. They should go upon the general good in regard to taxation.

Mr. S. thought it unnecessary and improper in every point of view, that the Committee should be directed to each particular article. One gentleman might rise in his place, and propose a resolution on the carriage tax, another on stills, a third on stamps, and so on, to the great delay of business. It was premature to offer any resolutions, until the Committee of Ways and Means made their report on the general reference.

Mr. RUTLEDGE said, when he submitted the resolution, he did not expect any serious opposition would be made to it, but, finding it was opposed, he would vary his motion, so as to read,

“Resolved, That the duties on brown sugar and bohea tea, and coffee, ought to be reduced.”

Mr. RANDOLPH did not think the House prepared to decide on the resolution.

If the revenue should be found sufficient to extinguish the national debt within the time mentioned in the report of the Secretary of the Treasury, pay the expenses of Government, repeal the internal taxes, and yet leave a surplus, he would be happy to join gentlemen in making reduction on their imposts.

Mr. R. hoped to live to see the time, when the General Government would only net the five per cent. ad valorem duty, agreeably to the resolution of the Old Congress, but he would not agree to any reduction until he could see his way clear into the necessary expenses of Government. Mr.

R. said, we are told we should not repeal the internal taxes, because the rich pay them. The taxes on carriages and loaf sugar are given as instances. And we are urged to reduce the taxes on salt, brown sugar, bohea tea, and coffee, because the poor pay it.

Mr. R. had no difficulty in saying, he was in favor of repealing the internal taxes, to get clear of the perplexities of the excise system, and the expenses incurred in collecting the internal duties. These taxes were not paid by the rich. Domestic distilled spirits were used by the poor. A principal objection with him to the internal taxes, was the host of officers brought under Executive patronage, who take their tone from those on whom they depend, and are ready to disseminate through the country the principles held by the Executive. Gentlemen appeared desirous of retaining that rampart of protection the Executive has been raising around him. His object in repealing the excise, was as much to get clear of this host of officers as to be relieved from the taxes.

Mr. R. said, he would endeavor to get clear of this question in the way appointed for Legislative bodies to get clear of questions calculated to embarrass them, and would move the previous question.

Mr. DENNIS moved a postponement of the resolution, which he thought would supersede the previous question.

Some observations were made as to points of order.

Mr. GILES said, it was necessary certain rules should be had for the government of deliberative bodies ; the previous question was adopted to get clear of subjects prematurely brought before them ; this was its original intention. That was one of the questions this rule was calculated for. The only proper question, was the previous one.

Gentlemen have now placed themselves in the situation they blamed others for taking. They have reversed the situation of things as to the internal revenue. Instead of contrasting the taxes, it is proposed to reduce the impost on certain articles.

There was no cause for gentlemen to say they are treated with disrespect. There was an evident precipitation in the business, and when that was the case, it was not the proper time for gentlemen to give their sentiments on a subject.

Mr. RUTLEDGE then restored his resolution to its original form.

The previous question was called, and ayes and noes agreed to be taken.

Mr. GODDARD said, there were, daily, references made of petitions on various subjects, and therefore this resolution ought to be referred.

The constituents of some gentlemen think proper to petition Congress on particular subjects. The constituents of others depend upon their Representatives to bring their grievances before the Legislature, and in this way, shall a reference be refused ?

Mr. GILES wished the question had been taken directly, and was prepared to give it his negative. He should be now in favor of the previous ques-

JANUARY, 1802.

Import Duties.

H. OF R.

tion. He thought it improper to refer particular articles, when the committee had them generally before them.

Mr. G. said, ninety-nine hundredths of brown sugar were consumed by the rich, or by those in middling circumstances. This was the case with the taxes generally. There were not sufficient grounds for saying the poor were affected by these taxes.

Mr. ELMER spoke against the resolution. He thought the poor consumed very little of the articles mentioned; many of them were, for months together, without having any sugar in their houses. He was in favor of the previous question.

Mr. DENNIS said, he was prepared to vote against the previous question, and for the main question. He thought it very unusual to oppose the reference of such a resolution.

Mr. DANA considered it proper, when an abstract proposition was presented to the House, that it should be decided there, or in Committee of the Whole; but a resolution like the one before the House, even upon the principles of the gentlemen who oppose it, should be referred, as proposed, to the Committee of Ways and Means.

Mr. SMITH agreed with his colleague in opinion, that it would be best to decide on the proposition directly. Early in the session, he proposed a resolution, that the external duties should be brought before the committee, and he mentioned, at that time, one of the articles (salt) which has occasioned so much debate since. It was his opinion, therefore, that the subject was already before the committee. He then read from the Journal the resolution he alluded to.

"Resolved, That the Committee of Commerce and Manufactures be directed to report whether any and what alterations are necessary in the laws imposing duties on the tonnage of ships or vessels, and on goods, wares, and merchandise, imported into the United States."

"Resolved, That said resolution be referred to the Committee of Ways and Means."

Mr. SMITH said, it would unnecessarily swell the journals to refer specific resolutions on each article. When the committee make a general report, it will be in the power of each gentleman to move a reduction on any article he may think proper.

Mr. GRISWOLD considered the arguments used by the gentleman from Virginia, (Mr. GILES,) respecting the previous question, went to show that the main question ought then to be put; he had also said he was prepared to give it his negative. Why, then, vote for the previous question?

Mr. RANDOLPH wished to withdraw the previous question.

The SPEAKER said, it required five members to agree in moving the previous question, and therefore it could not be withdrawn by one member.

Mr. BAYARD thought it clear that the main question should be then put. He had heard two arguments only used against it; one, that the resolution was already referred; but this was denied. He asked, would the committee fail in their duty if they did not report on this subject? Could

you impeach them of disobedience? Let me appeal to the candor of gentlemen. Many wish it referred because they think it is not before the committee. Where, then, can be the harm of referring it? They agree that the committee should make the inquiry, but say it is already referred. We think not. What, then, can be the injury upon their own grounds, if it should be referred? It is a proposition allowed on all hands to be proper for the committee to take under consideration.

Gentlemen say, delay is our object in bringing it forward. They are the authors of the delay. If they had taken a more proper mode, and, give me leave to say, a wiser mode, it would have been avoided. Further delay may now be avoided by them. The debate has been provoked. To offer a resolution on every article would not delay an hour in the session. Nor could we produce delay if they did not oppose us. The gentleman from Maryland (Mr. SMITH) talks about swelling the journals by that mode. Is he afraid of increasing the labors of the Clerk, or making work for your printers? What motive can there be for us to increase expenses in this way?

The resolution is not to reduce the taxes on those articles, but to make inquiry on the subject. Three hundred and fifty thousand dollars may be dispensed with, besides the internal taxes. We wish the whole subject before the committee, for them to calculate the two species of taxation, internal and external, that they may decide which taxes would be most beneficial to the community to be reduced. Will gentlemen say that these internal taxes shall be reduced, even in opposition to public utility?

The gentleman from Virginia (Mr. RANDOLPH) says, they create a host for Presidential patronage. We have no desire to send Executive influence over the country. These motives would influence me against these taxes. It is a great national object we have in view. If there should be any system of espionage in the tax on stills, this will not apply to the tax on loaf sugar, on carriages, &c. It has been said that it takes twenty per cent. on the aggregate amount of this tax to pay for collecting. But this is not the case with each particular item. On stamps it does not amount to six per cent., and if a number of these duties may be retained, and the expense of collection not exceed what is paid for collecting the impost, their great argument is invalidated. If the tax on necessities is more burdensome than on luxuries, which the excised articles are, will they pay the tax on imports if it should not be reduced?

Mr. NICHOLSON could not agree with the gentleman from Delaware as to the cause of delay. When the resolution was proposed, the question was called for, different gentlemen in favor of it continued to speak, although not opposed; it was not therefore his friends who occasioned the delay. He was opposed to referring the resolution, because the subject was already before the Committee. He hoped they would have the question.

Mr. GRISWOLD observed that every member who spoke on the subject said he was prepared to vote

on the main question—that the Committee of Ways and Means should not be instructed to inquire into the propriety of reducing the tax on the articles mentioned in the resolution. The subject was important, and the attention of the committee should be called particularly to it. Under the general reference, the Committee of Ways and Means can only say it is expedient that the Committee of Commerce and Manufactures be instructed to prepare a bill on imposts generally. A gentleman from New Jersey (Mr. SOUTHARD,) had said the carriage tax bore hard upon that State; that subject was referred to the committee. Another gentleman from the same State (Mr. ELMER,) said, sugar was not much used by the poor in his part of the country. Mr. G. said that it was very different where he was acquainted, for there they consumed great quantities of it.

Mr. DANA thought it important that this subject should be fairly met. As to swelling the Journal and increasing the expenses in that way, he was surprised to hear that objection made by the gentleman from Maryland, (Mr. SMITH,) who had proposed that Congress should adjourn for eight or ten days, which would have occasioned an expense to the nation of as many thousand dollars, and now he objects to the paltry, inconsiderable expense of swelling the journals. He was not for taking the bread from the mouth of the laborer. In his part of the country, the poor did consume the articles mentioned in the resolution. By poor, he did not mean beggars, but people who labored for their living; and he gloried that, in his part of the country, they could, and did use these articles.

Mr. D. said, if the public good required it, he would tax his constituents whether they agreed to it or not; but he would never agree to tax them severely, to gratify the whim of any part of the country.

Mr. DAVIS said, as it would no doubt be gratifying to the gentleman who had just sat down, he would answer him; he might otherwise think his arguments unanswerable. He believed the gentleman's constituents would have but little cause to thank him for his present attempts to serve them. The gentleman has been long in majorities, but never before made any attempt to serve them in this way. But when he is placed in the back-ground, when he has no longer any power to serve them, then forsooth he is very ready to do it. The gentlemen who are now so much in favor of repealing these taxes, when they were in a majority laid these taxes; and now, when in a minority, they call upon us to take them off. They say the state of the country is altered. True it is the state of the country is altered; we then pretended to fear a war from a nation surrounded by enemies, and so hedged in by enemies that they could not get at us. Then a quarrel was feared, and now we have a war actually on hand. The officers employed in collecting the internal taxes were too numerous to keep up that mode of taxation. It would be dangerous to take off the impost—as it was once said, What would be the effects of the general peace?

Mr. D. hoped the experience of that day would teach the majority to let the minority speak as they pleased on such questions, without making them any answer.

Mr. T. MORRIS said, the gentleman from Kentucky has given a new turn to the debate. He says the gentleman from Connecticut, while in a majority, taxed his constituents, and now calls on the present majority to take off these taxes. Mr. M. asked if that assertion was correct. If it was considered minutely, he thought it would not appear to be so. From whence did the call for reducing the taxes come? From the other side of the House. It came originally from the Executive. Was it fair then to say, the minority were attempting to take from the Government the means of supporting itself? Surely it was not so. It is a sentiment of the Executive and the Legislature to reduce the taxes. Should not an inquiry take place as to what taxes are the most proper to be reduced? Mr. M. thought it was due to his constituents to make the inquiry, in order to ascertain which should be repealed, and this liberty of thinking has called forth what we have just heard. He thought they were sent there to confer together about the public good. It was but fair to consider arguments, give them due weight, and meet them fairly. A proposition, when offered to that House, ought to be discussed.

Mr. DANA said, that he had voted for the taxes formerly, he was not ashamed to deny; when it was necessary these expenses should be augmented, he chose that his constituents should pay their part. Now, when the taxes are to be reduced, were they to be denied the privilege, not of lessening them, but of making inquiry on the subject? He did not ask it as a favor, but he claimed it as a right.

The gentleman from Kentucky had mistaken what he said in another particular; when he reminded the Committee that the taxes on the articles mentioned in the resolution were laid with a view to war prices, he did not mean we had war in this country, but there was a general war over the commercial world, and the man must be an ignoramus not to know that was his allusion.

The previous question was then put in these words—"Shall the main question be now put?" There were yeas 45, nays 49, as follow:

YEAS—Willis Alston, Theodorus Bailey, James A. Bayard, John Campbell, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Abiel Foster, John Fowler, Calvin Goddard, Roger Griswold, John A. Hanna, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, Robert Williams, and Henry Woods.

NAYS—John Archer, John Bacon, Phanuel Bishop,

JANUARY, 1802.

Import Duties.

H. OF R.

Richard Brent, Robert Brown, William Butler, Thos. Claiborne, John Condit, Richard Cutts, Lucas Elmen-dorf, Ebenezer Elmer, William Eustis, William B. Giles, Edwin Gray, Andrew Gregg, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, and Philip Van Cortlandt.

MONDAY, January 25.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented a bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," which was read twice and committed to a Committee of the whole House to-morrow.

The SPEAKER laid before the House a letter from the Secretary of the Navy, enclosing copies of the instructions heretofore given by the Department of the Navy, to the commanders of vessels in the public service, authorizing the capture of vessels belonging to the French Republic, in pursuance of a resolution of this House of the twenty-second instant; which were read and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act authorizing the discharge of Lawrence Erb from his confinement;" to which they desire the concurrence of this House.

The said bill was read twice and ordered to be committed to a Committee of the whole House to-morrow.

The SPEAKER laid before the House a letter from the Secretary of State, enclosing a copy of the instructions heretofore issued to the commanders of private armed vessels of the United States, from the Department of State, under the direction of the President, in virtue of an act of Congress, entitled "An act further to protect the commerce of the United States," transmitted in pursuance of a resolution of this House, of the twenty-second instant; which were read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his report on the petition of Joseph Ward, for himself and others, holders of certain bills of credit, referred to him by order of the House, on the eighth instant; which were read, and ordered to be committed to a Committee of the whole House to-morrow.

The House proceeded to consider the report of the Committee of Claims, of the twelfth instant, to whom was referred, on the fourteenth ultimo, the petition of Caleb Eddy, "with instruction to inquire into the expediency of extending to the

refugees from the British provinces of Canada and Nova Scotia, a further time for exhibiting their claims for lands under the "Act for the relief of the refugees from the British provinces of Canada and Nova Scotia," which lay on the table; Whereupon,

Ordered, That the report be committed to a Committee of the whole House on Thursday next.

Mr. T. MORRIS called up the resolution he laid on the table on Friday last, viz:

"*Resolved*, That the Secretary of the Treasury be directed to lay before this House the amount of duties paid on stamps in each State, specifying what proportion was paid by the commercial cities."

The question being put, there were for it 34, against it 54—so it was not carried.

IMPORT DUTIES.

Mr. NICHOLSON called up the resolution he laid on the table on Friday, for instructing the Committee of Ways and Means to report generally on the subject of impost duties.

Mr. LOWNDES wished to amend it so as to direct the attention of that committee particularly to the article of salt, brown sugar, coffee, and Bohea tea.

This the SPEAKER considered out of order, as resolutions on those subjects were then before the House.

Mr. RUTLEDGE and Mr. BAYARD wished to withdraw the resolutions they had offered on the articles of salt, brown sugar, &c.

The SPEAKER considered the resolutions in possession of the House, as they had been debated, and the previous question taken on them, and no motion could be made while another motion was pending.

Mr. BAYARD asked for information whether it was in order for him to state that he withdrew in his resolution?

Some conversation took place as to points of order.

The question on the resolution was called for.

Mr. DANA said there was no instruction given to the committee by the resolution of December 13, to make a report on the subject of imposts and tonnage. He was pleased to see this resolution moved by the gentleman from Maryland, as it showed his belief to be that the subject was not referred to the committee.

Mr. DANA expressed his wish that two things should be referred to the Committee of Ways and Means: First, a general view of the duties of imposts and excise that they might be contrasted; and, secondly, that certain articles should be specifically referred to them.

Mr. NICHOLSON said the gentleman from Connecticut was very much mistaken as to the object of his resolution. It was not that he did not think the subject before the committee, but as so much had been said about the former general reference, he wished to prevent the gentleman from Connecticut from quibbling respecting the reference.

[Here Mr. N. was called to order by Mr. GRISWOLD. The SPEAKER declared it as his opinion that the gentleman was in order. Mr. BAYARD

H. OF R.

Internal Revenues.

JANUARY, 1802.

appealed to the House, and called the yeas and nays, which were agreed to be taken.]

Some gentlemen wished the words made use of by Mr. NICHOLSON to be stated, that the House might determine whether it was in order to make use of such expressions, but it was put in the usual mode. Mr. DANA and Mr. NICHOLSON were excused from voting.

The question, "Was the gentleman in order?" was then put, and carried in the affirmative—yeas 56, nays 30.

Mr. NICHOLSON's resolution was to the following effect:

"Resolved, That the Committee of Ways and Means be instructed to inquire into the laws laying impost and tonnage duties, and report to this House."

It was put and carried.

INTERNAL REVENUES.

Mr. BAYARD called up the following resolution, which he had some days previously laid upon the table, viz:

"Resolved, That the Secretary of the Treasury be required to lay before this House an account, in detail, of the expenses incurred in the collection of the internal revenues of the United States; distinguishing, where the same may be practicable, the expenses attending the collection in each branch of the said revenue, and, also, an estimate of reduction of said expenses which may conveniently be made."

The resolution having been read, Mr. B. said: As it is extremely possible, Mr. Speaker, that it is designed that this resolution shall share the same fate with that which the resolution of the gentleman from New York experienced this morning, I shall be allowed at least by publicly stating, to justify to the world, the motive which induced me to bring it forward. [Mr. B. alluded to a resolution offered by Mr. T. MORRIS, the object of which was, to direct the Secretary of the Treasury to state to the House the amount of stamp duties collected in each State, distinguishing what part was paid by the commercial cities. When the resolution was taken up there was a call for the question. Nothing was said against the propriety of it. It being merely a call for information, and considered so much a matter of course to agree to such resolutions when no opposition was made to them, it was not supposed necessary to say any thing on the propriety and reasonableness of the resolution. Yet, to the astonishment of its friends, when the question was put, there were for it 34, against it 54.]

Gentlemen are infinitely deceived, said Mr. B., if they think our object is, by any particular mode of proceeding, to gain an unfair advantage of public opinion. If such a suspicion be entertained, our conduct has been viewed with a jaundiced eye. It is a motive which never has, and I hope never will direct our measures. If popularity is to be gained only by a prostitution of principle to ignorant and unthinking prejudice, we are content to forego it. I am far from being indifferent to public opinion; the approbation of our fellow-citizens is the only reward we can expect for our services; but it is a reward no honest man will

seek, if it is to be acquired only by artifice and deception.

I have avowed and avowed sincerely, that I am disposed to go hand and hand with gentlemen in the reduction of public burdens. When it was necessary I assisted in imposing them—now that circumstances permit I more cheerfully co-operate in taking them off. My true object is to make the most of our situation; not to be deluded by empty theories, or speculative systems, but, by an enlarged view of the various interests of the country, to discover by the reduction of what taxes the society would be the most substantially benefited.

The reduction of the Military Establishment creates considerable savings; other retrenchments are contemplated in the Navy and civil administration. These savings enable us to dispense with certain taxes; but is it not wise to examine diligently the operation of the several taxes which exist, and, after being informed by the various views which belong to the subject, to exonerate the community from those which, with the least benefit, are the most burdensome?

One great objection to the internal taxes is the expense of collection. I wish to know the particulars of this expense, in order to see whether it may not be curtailed. I wish also to be informed of the expenses attending each branch of the revenue, for the purpose of judging whether it may not be expedient to retain some branches, while it may be wise to part with others. These are my objects; do they not entitle us to the information asked?

We know in one instance, that the expense in collecting the stamp duty is less than five per cent. This appears by the report of the Secretary of the Treasury; but we are not informed of the particular expenses belonging to the other branches of the revenue.

Do gentlemen mean to lock up the doors of the Executive offices, and deny the information those offices were designed to supply to this House? Are they afraid of the light which may be thrown on this subject. Are they afraid that it will be discovered that it is not the general good which they are pursuing, but local and private advantages? Can information injure us? If the project contemplated is a correct one, will it not be promoted rather than obstructed by the information called for? For my own part, said Mr. B., I want this information, in order to discover the course which it is my duty to pursue. I do not feel myself committed as to any particular plan.

If it should really be found, that it is better to tax articles of necessary consumption than those of mere luxury, that a tax on carriages is more oppressive than a tax on salt or brown sugar, I should certainly yield to the conviction, however unexpectedly it might assail me.

Sir, said Mr. B., I must rely that the resolution will be agreed to; there is not a precedent in our annals of opposition to such a resolution; if, however, one is now to be introduced, I think it proper that the names of those gentlemen should hereafter appear by whom it was resisted, and by whom

JANUARY, 1802.

Internal Revenues.

H. OF R.

it was established. He therefore hoped the question would be taken by yeas and nays.

The Clerk, at the request of Mr. RANDOLPH, read an extract from the report of the Secretary of the Treasury, as follows:

"It will appear by the same statement, [M.] that while the expenses of collection on merchandise and tonnage, which are defrayed out of the revenue, do not exceed four per cent., those on permanent internal duties amount to almost twenty per cent. This, however, is an inconvenience which, on account of the great number of the individuals on whom the duties are raised, and of their dispersed situation throughout the whole extent of the United States, must, more or less, attach to the system of internal taxation so long as the wants of Government shall not require any considerable extension, and the total amount of revenue shall remain inconsiderable."

Mr. T. MORRIS.—If the honorable gentleman from Virginia (Mr. RANDOLPH) thinks that the extract of the report of the Secretary of the Treasury, the reading of which he has called for, furnishes the information demanded by my honorable friend from Delaware, he is mistaken. The Secretary's report gives you a general estimate of the expense of collecting the aggregate of the internal taxes, but does not specify the charge falling on each separate tax. From the statement exhibited by the Secretary, it appears that it costs twenty per cent. to collect the whole of the internal taxes; but if the detailed statement asked for by the gentleman from Delaware is furnished, it will appear that the collection of some of those taxes does not cost more than five or six per cent. To show how unfair it is to connect together the expense attending the collection of all the internal taxes, I need only refer gentlemen to an authority which I believe they will not dispute. If my memory, sir, is not very incorrect, it will appear by a publication of the present Secretary of the Treasury, written in the year 1796, that the tax on country distilleries cost in its collection near thirty per cent.; that on city distilleries about nineteen. These, sir, and other reasons, may evince the propriety of repealing the tax on country distilleries; but because this tax is expensive in its collection, because it may be liable to objections, does it follow that other taxes, such as the tax on carriages, on refined sugars, &c., which fall on the rich, and which are not expensive in the collection, does it follow, I say, that because it may be proper to repeal the first, that these are to fall too? It is, sir, in order to be enabled to make proper discrimination, to be enabled to know which of these taxes ought to be repealed, and which retained, that the gentleman from Delaware has moved his resolution. And here, sir, let me be permitted to express a hope, that the resolution now before you may not meet with the silent negative which was the fate of one intended also to procure information, and which I had the honor of laying on your table. I did and do still believe, sir, that the majority of this House could not have been actuated by proper motives in refusing that information. [Here Mr. RANDOLPH called Mr. MORRIS to order, saying that he had

no right to impeach the motives of members. Mr. M. observed that for his part he was at a loss to know what was considered disorderly in that House, but that he would submit to the correction of the Chair. The Speaker determined him to be in order, and Mr. M. proceeded.] With regard, sir, to the course of proceeding which gentlemen have lately adopted, persevering in an inflexible silence, rejecting every proposition made by a member in the minority, without deigning to show its fallacy, refusing public documents for our information and that of our fellow-citizens, without showing, or even pretending to show, that they are unnecessary, I can only say that it militates against all my ideas of propriety. I have always hitherto supposed that every Representative on this floor had a right to be heard; that he had a right to call on the majority for their reasons both when they supported and opposed public measures. Gentlemen may, if they please, meet in what they have denominated caucusses when power was in other hands; they may then confer together about the measures in which they may think proper to unite; but, sir, if their debates are to take place there, and there alone, if we are not to be furnished here by them with the reasons which induce them to adopt public measures, they ought at least to open their doors to the minority, in order that, if they cannot hear their arguments in the proper place, they may not close them altogether. I trust, sir, that gentlemen themselves will see the impropriety of persevering in this line of conduct, and that they will consent to pay, if not to gentlemen in the minority, at least to their propositions, the attention and respect which they may deserve.

Mr. GRISWOLD said, that he presumed the gentleman from Virginia (Mr. RANDOLPH) had requested that the extract from the report of the Secretary of the Treasury might be read, and which the House had just heard, for the purpose of proving that the resolution under consideration ought to pass. Indeed that report, and the statement to which it referred, evinced in the most satisfactory manner that the information required by the resolution was absolutely necessary for the purpose of enabling the House to decide understandingly on the proposition, which it was expected would soon be brought forward, for abolishing the internal taxes. The Secretary in his report had declared that the expense of collecting the internal taxes amounted nearly to twenty per cent. on the amount collected. It appeared, however, from the statements to which the Secretary had alluded, that the tax on stills, the carriage tax, the tax on licenses, on sales at auction, and the tax on refined sugar, had been included in one class, and the expense of collecting all those taxes, without distinguishing the charges on each branch, had been stated to be nearly twenty per cent., whilst the expense of collecting the stamp duty, another branch of the internal taxes, was short of five per cent., varying only a fraction from the charges on the revenue from impost and tonnage. These statements might be satisfactory as far as they went, but it was obvious that in examining

the branches of a revenue, with a view to the expense of collection, it became necessary to ascertain the precise charge which had fallen on each branch, and to obtain this necessary information, and which the report and statements had left defective, the resolution had been principally brought forward. And what had rendered this information peculiarly necessary at this time was the ground which had been taken in opposition to the internal taxes. The only argument which he had heard against those taxes, and which did not equally apply to the impost, was drawn from the great expense which had arisen in the collection. To enable the House, therefore, to decide whether the fact existed on which that argument had been founded, it became necessary to inquire in the manner proposed by the resolution whether the extraordinary expense with which those taxes had been charged might not be diminished, and whether the expense really existed in relation to each description of them.

Mr. G. said that he presumed no gentleman was prepared to say that the general expense of collection might not be diminished, and so far was he from believing that every branch of the internal taxes was subjected to the charge of nineteen or twenty per cent., he was perfectly confident that if gentlemen would agree to the resolution, the detailed statements, which the Secretary would furnish in obedience to it, would prove that the expense of collecting certain branches of those taxes would fall much short of the sum at which the same has been estimated.

The consent of the House, said Mr. G., to every call for information, had formerly been so much a matter of course, that he should not have troubled the House with any remarks upon so plain a question as the present, had not the experience of this day proved, that gentlemen were not always to be indulged by the House with the information which they required; and the profound silence which had at this time been observed by those gentlemen who could either admit or reject the resolution, appeared to indicate a determination on their part to refuse the important and necessary information required by the resolution. He did presume, however, that upon this occasion the House would consent to the resolution, and more particularly, as the report of the Secretary of the Treasury, which had been read at the request of the gentleman from Virginia, proved so clearly the necessity of passing it.

Mr. HUGAR could not reconcile it with his sense of duty, to give a silent vote on the present occasion, nor could he but lament the strange and novel course of proceeding which gentlemen had thought proper to adopt. The intention it would seem, was to repeal the internal taxes, right or wrong, and at all events; and so determined were gentlemen on carrying this favorite project into execution, that everything like previous investigation, or even a wish to gain information on the subject, was hooted at and treated with the most sovereign contempt. Every, the smallest, reduction on taxes of any other description, was avowedly to be excluded, nor was any proposition to this effect

deemed worthy of even a moment's consideration. The measure proposed, however, interested in a very particular manner that part of the community he had the honor to represent. They paid, it was true, a small portion of the internal taxes, but the various other taxes upon salt, brown sugar, coffee, &c., and the duties on imposts generally, fell more immediately and far more heavily on them. Was it not natural, therefore, that he should have some hesitation on the subject; that he should feel anxious to see this project thoroughly and completely investigated; that he should wish to receive every possible information which might either tend to satisfy his mind as to the expediency of repealing the internal taxes only, to the total exclusion of all others, or enable him to propose some other project, equally beneficial perhaps to the public at large, and which might at the same time accord better with the immediate interests of his constituents?

That peace had been restored to the country, and the moment consequently approached when that House might hope to diminish the burdens of their constituents, could not but afford infinite satisfaction to every gentleman present. He rejoiced most sincerely at the pleasing prospect, and felt much gratification in the idea of contributing with others to afford this relief to the community. He had not, indeed, any very particular hostility to the repeal of any items of the internal taxes which might be found oppressive or inconvenient to any portion of his fellow-citizens; nor would he object even to the exclusive repeal of the whole of them, if, upon due consideration, it appeared that by so doing, such peculiar and important advantages would accrue to the great family of America, as would, upon an enlarged and national view of the subject, compensate his constituents for the greater quantum of public burdens, which would thereby be entailed on them. When fortunately, however, the state of things seemed to admit a diminution of the public burdens, he did conceive that every portion of the country was equally entitled to the attention of the Legislature, and that the reductions should, if possible, be effected in such manner as to extend an equal and proportionate relief to every description of citizens—as well those who were scattered along the shores of the Atlantic, as those who inhabited the interior of the country, or had emigrated beyond the mountains. The House would recollect how much warmth—notwithstanding the previous determination to silence—had been in the course of a former debate evinced by the gentleman from Kentucky, (Mr. DAVIS.) He could not tolerate a doubt as to the propriety of a total repeal of these taxes. The reason of this was very evident. This description of tax was that by which his constituents principally contributed to the exigencies of the Government. To that gentleman, of course, everything militating against or tending to delay for a moment the success of this favorite project, was highly objectionable, and would excite all his sensibility. And was it not, Mr. H. asked, to be expected that he, too, should feel some little anxiety at the idea of

JANUARY, 1802.

Internal Revenues.

H. OF R.

this relief being extended to a favored portion of the community, whilst those he had the honor to represent were left to struggle under the weight of all those burdens which bore most hard and most immediately on them? His constituents, he was proud to say it, had ever contributed with alacrity and cheerfulness to the wants and exigencies of the Union. They were prepared and willing, he was confident, to do so still; and he made not the least doubt but that they would readily subscribe to the exclusive repeal of the internal taxes, and submit without a murmur, to the continuation of all the other taxes, however burdensome to themselves, provided they are convinced and well satisfied that this measure was fairly and impartially adopted for the welfare of the whole, and not for the benefit of the one at the expense of the other division of the country. It was for this purpose, therefore, that he wished the present motion to be adopted, and that he had desired the attention of the Committee of Ways and Means to be directed particularly to those articles of importation and of general use and necessity, such as salt, sugar, coffee, common teas, &c. He was desirous that these and similar items should be compared with the carriage tax, the tax on licenses to retail spirituous liquors, and various other similar items of the internal taxes, and that the House might be furnished with such information with respect to both, as might enable him to judge, whether there might not be a partial repeal as well of some of the external as internal taxes, and not a total and exclusive reduction of the latter, as was contemplated; whilst all the former, however grievous and inconvenient, were to be retained. Did he then ask anything which was unreasonable or improper? Could any possible inconvenience accrue from allowing him to obtain the information he desired? If not, why refuse to indulge him in what he deemed useful, and what (at the worst) could only be regarded by gentlemen themselves as superfluous information? Was it fair; was it becoming; did it comport with that civility and politeness which was due from the one to the other, by citizens of a common country, assembled together for the express purpose of consulting upon their common interests, to treat thus cavalierly what must at least be allowed to be a respectable minority?

When on his return home, he was asked by his constituents, how it happened that the burdens on their brethren of the interior country had been entirely taken off, and that not the smallest relief had been extended to them, what answer was he to give them? The President, he must say, had hinted something of the kind in his message to the two Houses, at the commencement of the session, and the Secretary of the Treasury had casually observed in one of his reports, that the internal tax required more officers and greater expense to collect it than the duties on imports. For himself, he certainly had all due deference for these two officers. He felt personally very great respect for the gentleman who at this time filled the office of Chief Magistrate of the United States. He held also in high estimation the tal-

ents of the Secretary of the Treasury, but notwithstanding what had fallen from these two gentlemen, his mind was not convinced, nor did he think these were documents sufficient to satisfy the minds of that portion of our fellow-citizens who, from the appearance of things at least, might conceive that their interests had not been sufficiently attended to, and that in the reduction of the taxes now existing, justice had not been dealt out with an impartial and equal hand. Will not this impression be rendered still more strong, when the citizens in this situation learn that even the information requested from the public departments by those to whom they judged proper to entrust their interests, had been denied them, without one solitary reason being given for the refusal? When they are further told, that the various references which were attempted to be made in different shapes, or for an inquiry as to the propriety and possibility of effecting a partial repeal of the most burdensome external as well as internal taxes, were again and again rejected?

With respect to the two only reasons which had ever been offered in favor of the exclusive repeal of the internal tax, viz: the expense and number of officers required to collect it, was it not the immediate and precise object of the resolution under debate to inquire whether it was not possible to devise some means by which these inconveniences might be obviated, or at least greatly lessened? And what objection could there be to the inquiry? Were gentlemen perfectly and entirely convinced that nothing of the kind could be done, or were they apprehensive that the thing was in itself so feasible, that an inquiry of this kind would throw a stumbling-block in the way of the project already determined on, which although he would freely acknowledge, that as an abstract proposition it was expedient as much as possible, and to collect your taxes at as small an expense, and by means of as few agents as conveniently could be done, yet there was another still more important maxim which ought never to be lost sight of: this was, that the burdens of the Government, as well as the advantages which flowed from it, should be fairly, equally, impartially, and equitably distributed among every description of the citizens, in whatever part of the country they resided. If, therefore, it did happen, that a few more officers and a somewhat greater percentage were required to collect the taxes in one than in another part of the country, this alone would most certainly and indubitably not be a sufficient reason to do away all the taxes in the one, and throw the whole burden of the Government on the inhabitants of the other.

Mr. H. concluded by observing that he had endeavored to consider this whole business as coolly and with as much temper as was in his power—that he could not, however, but again express his regret at the line of conduct adopted by gentlemen, and that, as he could not see, nor had there been pointed out, any possible inconvenience which could accrue from adopting the resolution, he really thought the wishes of himself and those who thought with him on the present occasion, for in-

formation, ought, in fairness and candor, to be gratified—supposing even that the information requested did not appear equally important and necessary to those who differed with them in opinion.

Mr. RUTLEDGE confessed himself much puzzled by the new forms of proceeding this day adopted. Ever since he had had the honor of a seat in Congress, it had been invariably the practice, when measures were proposed not agreeable to the majority, for them to offer their objections to them. This had ever been the practice, and the experience of its convenience offered strong reasons for its continuance. When the majority stated their objections to any measure, the minority in sustaining it answered them fully: thus, both sides acted understandingly, and when the proceedings of the National Legislature went out to the people, they were at the same time informed of the reasons under which their Representatives had legislated. This had not only been the usage in Congress, but the form of proceeding in all representative bodies with whose history we are acquainted. Even in the British House of Commons, which gentlemen had often and emphatically styled a mockery of representation, so great is the respect paid to public opinion, that the majority deem it their duty to assign in debate the reasons of their conduct. Although the Minister in England has quite as much confidence in the strength of his majority as gentlemen here can have in theirs, yet, in feeling power, he does not forget right, and his regard for public opinion is so great, that he never secures his measures by a silent vote. In these days of innovation, we, it seems, are to pursue a different course. When the resolution offered this morning by his honorable friend from New York (Mr. MORRIS) was taken into consideration, not a voice was raised against it. This profound silence made us expect a unanimous vote; but, in consequence, he supposed, of some out-door arrangements, it was rejected by this silent majority. He had seen many deliberative assemblies, but never before witnessed such a procedure. He would not say whether this was respectful towards the minority, who, we have been told from high authority, have their equal rights—he would not say whether it was dignified as it regarded the majority, but, without pretending to any spirit of prophecy, he would venture to say it could not be deemed politic or wise by the people of this country.

When the doors of Congress were open, and persons admitted to take the debates, the people expected to be fully informed of the views and motives which governed the votes of their Representatives. But it seems our constituents are not to be treated with this heretofore common civility. In proposing measures we are obliged to guess at what gentlemen feel against them, (for they say nothing,) and to defend them, without knowing in what they are objectionable to those who govern in this House. This kind of governing is but ill calculated to produce harmony, to restore social intercourse, and to heal the wounds inflicted on society by the spirit of party.

His friend from Delaware, not satisfied with

the report made by the Secretary of the Treasury respecting the expense of collecting the internal revenues, begs that we may have a further report, and one more in detail, and declares that we really want more information to assist us in forming our opinions. But gentlemen refuse this reasonable request. They may have sufficient information; they may be in habits of intimacy with the heads of departments; in daily communion with them; but we are not, and should act with impertinence, were we, by our personal applications, to occupy the time of the heads of departments, which is fully engaged during the sitting of the Legislature.

The regular mode of obtaining information is, for the House to ask for it. When heretofore in a majority, he and his friends had always consented to call upon the heads of departments for any information the minority said they wanted; he should continue to vote for asking whenever any gentleman said he wanted it—though probably he should not be thanked for it, as gentlemen on the other side were now so strong as not to want his vote. A bill had lately been introduced for the protection of our Mediterranean trade, and the gentleman on my right, from Virginia, with his friends, wanted information from the Secretary of the Treasury respecting the extent and value of this trade—to know whether it was worth protecting. I voted for the resolution of the gentleman from Virginia, because he said he wanted information. I did not want any, for the reports of the Secretary of the Treasury for some years past had showed the amount of the trade; besides, I deemed it our duty, this nation being highly commercial, to protect our trade in all its branches. Gentlemen on the other side seem to shrink from all our propositions, lest they should interfere with the favorite project of annihilating all our internal revenues. There is no cause for this apprehension. The President's Message invites to this measure, and the friends of the recommendations of the Executive are too numerous to have their measures obstructed by our efforts. All we ask for is information relative to the expense of collecting this part of the public income. Gentlemen say we shall not have it, and yet, on all past occasions, they talked about the propriety, in a popular Government, of giving information to the public, of not economising in diffusing information—they who now refuse information which is solicited by a large portion of the Representatives of the people. Gentlemen not only withhold information from us, but will not assign their reasons for withholding it; and to all, we urge they will not deign to say anything but No.

Mr. BAYARD.—I thank God, if we have not the advantage of hearing gentlemen on the other side express their opinions, we have still the liberty of expressing our own sentiments. Not knowing how long we may have that liberty, I will now state further my opinion on the subject before the House.

The gentleman from Virginia, (Mr. RANDOLPH,) without condescending to speak himself, has deigned to ask the Clerk to read—what! an extract from the report of the Secretary of the Treasury, show-

JANUARY, 1802.

Import Duties.

H. OF R.

ing the aggregate expense attending the collection of the internal revenue to be about twenty per centum. But is this an answer to my inquiry, when I want particular information that shall discriminate the expense of collecting the different branches of this revenue?

I have another object in view. I wish to know whether the Secretary of the Treasury may not devise a plan by which these taxes may be collected on as good terms as on articles of impost.

When information has been called for heretofore, has it ever been denied? Have gentlemen a precedent for their conduct? Is there an instance at any epoch when the strength of a silent vote opposed information that was wanted? Will this information thwart the favorite views of some? Are gentlemen afraid of information, lest they could not carry a favorite project when it should appear to be opposed to the public benefit? Are they afraid to let information come here lest it should go out to the people?

If the information we want is refused, without any reasons being assigned, I do not see what business we have to do here. Do gentlemen mean to drive us from this floor? Are they ready to say our services are no longer wanted? If it is enough for us to ask a thing to be denied; if whatever we propose is rejected; if no answer is given to our arguments; if we are listened to only to indulge the laugh of insolent power, I think the sooner we go home the better. We shall at least save the money of the nation. And I am satisfied, if this conduct be pursued, we shall not only be justified, but it will be expected by the nation that we no longer keep our seats, which are not merely useless but burdensome to the country.

Mr. GODDARD said, that he had until this time consoled himself with an idea, that whatever measures might be adopted the present session, he and those with whom he acted would at least have been permitted to understand the principles upon which those measures would be supported. This consolation he had derived from a declaration, made at an early period of the session, by an honorable gentleman from Virginia, (Mr. GILES,) that economy of information was not what he wished to be practised. But of that solitary consolation, he had this day been bereft. We have already made such advances in the system of economy, as to have arrived at a point where it is thought necessary to practise economy of information. He inferred this, from the manner in which the resolutions which had been called up, had been treated. Several motions had been made, to instruct the Committee of Ways and Means to inquire into the expediency of reducing the duties upon certain imported articles, necessities of life; they had been uniformly repelled. Gentlemen wished, when the flourishing condition of our finances enabled us to reduce taxes, to take a view of the whole ground—to compare, with each other, the system of internal and external taxation.

To enable us to do this, a resolution had been offered, the object of which was to obtain, from the proper department, information necessary to this purpose:—that also had been repelled. Another

resolution is now offered, which has in view the same object, relating to another subject. Gentlemen seem determined to dispose of that also, in the same manner, by a silent vote.

Mr. G. said that he could not be persuaded but that gentlemen would candidly review the course they had adopted, and yet suffer us to have, from the public offices, the information necessary to enable us to act correctly upon the business before us.

The question was taken, and it passed in the negative—yeas 37, nays 57, as follows:

YEAS—John Archer, James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Bacon, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Sprigg, Richard Stanford, Jos. Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

DUTIES ON IMPORTS.

Mr. RUTLEDGE called up for consideration the resolution which he moved on Friday, on which the previous question was then taken, viz:

Resolved, That the Committee of Ways and Means be instructed particularly to inquire into the expediency of reducing the duties on brown sugar, coffee, and bohea tea."

Mr. GRISWOLD hoped the resolution would be decided upon.

Mr. RUTLEDGE hoped the reference would obtain. These articles paid the highest rate of duties and were of the first necessity. In looking over the rates of duties on imports, he saw many articles that were taxed enormously high. Those in the resolution were of the first necessity, the duty high, and laid when they were at war prices: while the people received war prices for their produce, they could with convenience pay for these articles, though high. The object of the resolution was merely to inquire, and he did not see how it could interfere with any object gentlemen have in view.

Mr. DANA.—I beg liberty to tender the homage of my profound respects, for the dignified situation in which gentlemen have now placed themselves, and congratulate them on their silence. There is something peculiarly impressive in this mode of opposing everything that is urged. It is seldom that gentlemen have exhibited such a remarkable appearance of a philosophical assembly.

"That dumb Legislature will immortalize your name"—is said to have been the language of a certain distinguished General to a certain nominal Abbé, who has been represented as having pigeon-holes full of constitutions of his own making. During the memorable night at St. Cloud, when the French Council of Ancients, and Council of Five Hundred, were adjourned—to meet no more—it may be recollected, the powers of executive government were provisionally committed to three persons, styled Consuls, and two of them were the General and the Abbé. From each of the Councils, twenty-five members were selected, to compose a commission, and assist the provisional Consuls in preparing a constitution for France. Of the numerous projects of constitutions presented by the Abbé, it is said no part was finally adopted, except the plan of a dumb Legislature. This, the General instantly seized, with apparent enthusiasm, exclaiming to the Abbé, "that dumb Legislature will immortalize your name!" And it was determined to have a *corps législatif* that should vote, but not debate.

It was scarcely to be expected that anything like this would soon take place in our own country. But it is the prerogative of great geniuses, when in similar circumstances, to arrive at the same great results, although with some difference in the process. Nor can I forbear offering my tribute of admiration for the genius who has projected a mode of proceeding among us, that so nearly rivals the plan adopted in France. I know not to whom is due the honor of this luminous discovery. After ascribing to him, however, all merited glory, permit me to examine the force of the argument relied on by gentlemen in opposition to the proposed resolution.

Their argument is silence. I hope to be excused if I do not discuss this subject in the most satisfactory manner; as silence is a new species of logic, about which no directions have been found in any treatise on logic that I have ever seen. It will be my endeavor to reply to gentlemen by examining some points which may be considered as involved in their dumb arguments.

One of these points is—that certain members of this House have pledged themselves to their constituents, for repealing all the internal taxes. They may have declared their opinions to this effect, before the election; and, being chosen under such circumstances, may now deem themselves bound in honor not to vary. The terms assented to between their constituents and themselves may, therefore, be viewed by them as the particular rule of their own conduct. But is this House to be regarded in the same light with the English House of Commons, during the early period of their history, when the knights of shires,

and the representatives of cities and boroughs, were instructed on what terms they should bargain with the Crown for special privileges, and were limited to the price agreed on by their constituents? The situation of gentlemen who have thus pledged themselves to vote for repealing the internal taxes, must be irksome, indeed, if on mature consideration they should believe it more proper and more beneficial for the country to have other taxes reduced. Those who have entered into a stipulation of this sort, so as to feel it as a point of honor, are so peculiarly circumstanced that they might think it too assuming in me, were I so much as to express a desire that they would vote for reducing some of the duties on imports, instead of repealing all the internal taxes. It is to be hoped, the number of members who have pledged themselves in this manner, does not exceed twenty-five or thirty.

Another point involved in this argument of silence is, that other gentlemen may have pledged themselves to these, and given them a promise of support on this subject. It must be acknowledged that this was more than was required on account of their seat in this House. If any gentlemen have absolutely so pledged themselves to others who had before pledged themselves to their constituents, it must indeed be difficult to convince them. On this point, their minds must be so differently constituted from mine, that there does not seem to be any common principle between us that can be assumed as the basis of argumentation.

Another point is, the Executive has recommended a repeal of all the internal taxes, and not any reduction of the impost. And will gentlemen act upon this as a sufficient reason for their conduct? Is it now to become a principle, that the Executive is to deliberate, and the Legislature to act, and that no measure is to be adopted unless proposed by the Executive? Would it not be better for the country to abolish this House, and to avoid useless expense, if it is to be nothing more than one of the ancient Parliaments of France, employed to register the edicts of a master?

The silence of the gentlemen may also be considered as having relation to their great desire for the harmony of social intercourse. To prevent its being disturbed in the House by debating, they may have come to a determination that all the great questions shall be settled by gentlemen of a certain description, when met in nocturnal conclave, and be only voted upon in this place. If such be the fact, it seems but reasonable that any of the members of this House should be admitted in meetings of the conclave, as delegates from the territorial districts are admitted into Congress, with a right to debate, although not to vote. If, however, this is thought too much, gentlemen should at least have galleries provided, so that other members of the Legislature might be admitted as spectators, and have the opportunity of knowing the reasons for public measures.

The question was called for, when Mr. EUSTIS begged the Speaker would state it, as, in listening to the arguments of the gentleman from Connecticut, he had forgotten it.

JANUARY, 1802.

Duty on Salt.

H. OF R.

Mr. RUTLEDGE said he was much pleased by the question of the honorable gentleman from Massachusetts. When gentlemen ask, What is the question? it is to be hoped that they will respect its merits; but, from the scene this day acted, he had learned that the only inquiry with gentlemen would be, from what side does this come?

The question was then taken by yeas and nays, and lost—yeas 35, nays 58, as follows:

YEAS—James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Wm. Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, Wm. H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thos. Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Richard Brent, Robert Brown, Wm. Butler, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New Thos. Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne and Robert Williams.

DUTY ON SALT.

The House then proceeded to the further consideration of a motion on which the previous question was called for and taken on the twelfth instant; and the said motion being amended to read as follows:

“Resolved, That the Committee of Ways and Means be instructed, particularly, to inquire into the expediency of reducing the duty on salt; and, also, the duties on articles of necessary consumption, and more especially the duties oppressive to the agricultural and mechanical interests of the community.”

The main question was taken that the House do agree to the said motion, as amended, and passed in the negative—yeas 32, nays 57, as follows:

YEAS—James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Jos. Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thos. Morris, Joseph Pierce, Elias Perkins, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon,

Phanuel Bishop, Richard Brent, Robert Brown, Wm. Butler, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New Thos. Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Sprigg, Richard Stanford, Jos. Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

And the House adjourned.

TUESDAY, January 26.

Memorials of sundry inhabitants of the Territory of the United States Northwest of the river Ohio, purchasers and settlers on the lands originally contracted for by John Cleves Symmes, between the Great and Little Miami rivers, were presented to the House and read, respectively praying that Congress will extend the time for the payments to be made by the memorialists, on account of the contract between the United States and the said John Cleves Symmes, and his associates, for the reasons therein specified; or grant such relief in the premises, as to their wisdom shall seem meet.

Ordered, That the said memorials be referred to the committee appointed, on the eighth ultimo, to whom was referred the petition of James McCashen and others; and to whom was also referred, on the eighteenth instant, the memorial of John Cleves Symmes.

The House, resolved itself into a Committee of the whole House on an act of the Legislature of the Territory of the United States Northwest of the river Ohio, entitled “An act declaring the assent of the Territory Northwest of the river Ohio, to an alteration in the ordinance for the government thereof;” to which Committee of the whole House were also referred, on the twentieth and twenty-fifth instant, the petitions of sundry inhabitants of the said Territory, in opposition to the recited act; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

An engrossed bill to continue in force an act, passed on the first day of February, one thousand seven hundred and ninety-eight, entitled “An act supplementary to the act, entitled ‘An act regulating foreign coins, and for other purposes,’ was read the third time, and passed.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the eighth instant, the petition of sundry merchants of the city of Philadelphia, made a report; which was twice read, and agreed to by the House as follows:

“The Committee of Commerce and Manufactures,

H. OF R.

Proceedings.

JANUARY, 1802.

to whom was referred the petition of Daniel W. Coxe and others, merchants of Philadelphia, report :

"That the petitioners state that they are deprived of the drawbacks on goods of foreign growth and manufacture, and on salted provisions, shipped by them from the port of Philadelphia to ports of foreign nations, although they had complied with every requisite required by law for the obtaining of such drawbacks, save only the taking of the oaths within the ten days prescribed by law, to wit : 'That the goods were truly intended to be exported, and were not intended to be re-landed within the United States;' and the giving bond that the said goods, or any part thereof, should not be landed within the United States.

"The petitioners further state, that they appeared at the custom-house within a very few days after the ten days (prescribed by law) had expired, and offered to take the said oaths, and to give the bond required by law; when, to their surprise, the Collector informed them that it was no longer in his power to afford them relief: They, therefore, solicit Congress to authorize the Collector for the port of Philadelphia to issue the debentures due to them respectively.

"The committee are of opinion that the prayer of the petitioners ought to be granted, and submit a bill to that effect."

Mr. SAMUEL SMITH, from the same committee, presented a bill for the relief of Daniel W. Coxe and others; which was read twice and committed to a Committee of the whole House on Thursday next.

Mr. SPRIGG reported a bill for the government of the Territory of Columbia.

[The bill establishes a Legislature, chosen by the taxable citizens of the United States one year resident in the Territory, composed of a House of Representatives, to consist of twenty-five members, seven whereof to be chosen by the district of Rock Creek, seven from the part west of Rock Creek, and eleven by the county of Alexandria. The Governor to be appointed by the President of the United States. The Territory to pay the Legislature, and the United States the Governor. The judges to hold their offices during life, unless removed by the President on the application of two successive Legislatures.]

Referred to the Committee of the whole House on Tuesday next.

A memorial and remonstrance of sundry inhabitants of the county and town of Alexandria, in the District of Columbia, was presented to the House and read, praying that Congress will not agree to any plan, or pass any bill respecting the government of the said District, which shall, by the establishment of a subordinate Legislative or subordinate Executive, or otherwise, tend to unite under its power, the two parts of the district, as separated by the river Potomac.—Referred to the Committee of the whole House last appointed.

Ordered, That the letters of the Secretary of the Department of the Navy and of State, enclosing copies of instructions heretofore issued from the said Departments, under the direction of the President, to commanders of armed ships and vessels of the United States, in virtue of an act of Congress, entitled "An act further to protect the commerce of the United States," which were re-

ceived, read, and ordered to lie on the table, on the twenty-fifth instant, be referred to the Committee of Ways and Means.

The House resolved itself into a Committee of the whole House on the bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson; and, after some time spent therein, the Committee rose, and reported the bill without amendment.

Ordered, That the bill be engrossed, and read the third time to-morrow.

On motion, it was

Resolved, That a committee be appointed to inquire into the situation of the several tracts and parcels of land which have been granted, appropriated, or reserved, for the support of public schools and seminaries of learning, and for the support of religion, within the Territory of the United States Northwest of the river Ohio; and that the committee take into their consideration what measures are necessary, and ought to be adopted, to carry fully into effect the design of every such grant, appropriation, or reservation.

Ordered, That Mr. FEARING, M. DAVIS, Mr. GRAY, Mr. ROBERT WILLIAMS, and Mr. FOSTER, be appointed a committee, pursuant to the said resolution; and that the said committee be authorized to report by bill, or bills, or otherwise.

Mr. MITCHELL, from the committee appointed, on the fifteenth ultimo, presented a bill for revising and amending the acts concerning naturalization; which was read twice and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Commerce and Manufactures, of the fifteenth instant, to whom was referred the memorial of Thomas K. Jones; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the resolution contained therein; which is in the words following, to wit:

"*Resolved*, That the Collector for the port of Boston and Charlestown be, and he hereby is, authorized to issue to Thomas K. Jones the debentures on ten pipes of wine, imported by said Jones, in the ship Juno, Captain Thomas Dingley, and exported, on the fifteenth of June, last, in the ship Enterprize, Captain Hearsy, for Havana, on full and satisfactory proof being made to the said Collector of the actual quantity of wine in the said pipes at the time of their being shipped, as aforesaid: *Provided*, that every other requisite shall have been pursued, agreeably to law, for the obtaining the said drawback."

On the question to agree with the Committee of the whole House in their disagreement to the said resolution, an adjournment was called for; whereupon, the House adjourned.

WEDNESDAY, January 27.

An engrossed bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the third time; and the further consider-

JANUARY, 1802.

Northwest Territory.

H. OF R.

ation of the said bill was postponed until Monday next.

Petitions of sundry inhabitants of the Territory of the United States Northwest of the river Ohio, whose names are thereunto respectively subscribed, to the same effect with the petitions of sundry other inhabitants of the said Territory, presented on the twentieth instant, were presented to the House and read.—Referred to the Committee of the whole House to whom is committed an act of the Legislature of the said Territory, entitled “An act declaring the assent of the Territory Northwest of the river Ohio to an alteration in the ordinance for the government thereof.”

A memorial of the Philadelphia Chamber of Commerce, signed by Thomas Fitzsimons, their President, was presented to the House and read, praying that a law may be passed by Congress to authorize an appropriation for the expenses of supporting, and keeping in repair, certain piers heretofore erected in different places in the river Delaware, for the protection of vessels, in inclement seasons, navigating the said river.—Referred to the Committee of Commerce and Manufactures.

Mr. JONES, from the committee appointed on the fourteenth instant, presented a bill authorizing the payment of two thousand and eight hundred dollars to Philip Sloan; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. JOHN C. SMITH, from the Committee of Claims, to whom was referred, on the thirteenth instant, the petition of John Carr, and two reports of committees thereon, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

A Message was received from the President of the United States, transmitting the accounts of Indian trading houses, as rendered up to the first day of January, one thousand eight hundred and one, with a report of the Secretary of War thereon, explaining the effects and the situation of that commerce, and the reasons in favor of its further extension. The Message and the documents accompanying the same were read, and ordered to be referred to the committee appointed, on the seventh instant, to whom was referred the memorial of Evan Thomas and others.

Ordered, That the report of the Committee of Commerce and Manufactures, of the fifteenth instant, on the memorial of Thomas K. Jones, to which the Committee of the whole House reported their disagreement on the twenty-sixth instant, be recommitted to the Committee of Commerce and Manufactures.

NORTHWEST TERRITORY

The House again resolved itself into a Committee of the Whole on an act of the Legislature of the Territory of the United States Northwest of the river Ohio, entitled “An act declaring the assent of the Territory Northwest of the river Ohio to an alteration in the ordinance for the government thereof;” to which Committee of the whole House were also referred the petitions of sundry inhabitants of the said Territory in opposition

thereto: Whereon a debate of some length ensued, on the motion of Mr. FEARING, deciding the constitutionality of the act, which was supported by Messrs. FEARING, and GRISWOLD; and opposed by Messrs. DAVIS, GILES, and BAYARD. On the question being taken, it was lost. Mr. GILES’s motion, verbally modified, was then agreed to; when Mr. JOHN C. SMITH, the Chairman, reported that the Committee had come to the following resolution:

Resolved, As the opinion of this committee, that the act passed by the Legislature for the Territory Northwest of the river Ohio, entitled “An act declaring the assent of the Territory Northwest of the river Ohio to an alteration in the ordinance for the government thereof,” ought not to be assented to by Congress.

The House then proceeded to consider the said resolution, and the same being again read, the question was taken, that the House do concur with the Committee of the whole House in their agreement to the said resolution, and resolved in the affirmative—yeas 81, nays 5, as follows:

YEAS—Willis Alston, John Archer, John Bacon, James A. Bayard, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Davenport, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Andrew Gregg, William Barry Grove, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, Michael Leib, Ebenezer Mattoon, John Milledge, Samuel L. Mitchell, Thomas Moore, Lewis R. Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, Lemuel Williams, Robert Williams, and Henry Woods.

NAYS—Thomas Boude, Manasseh Cutler, Abiel Foster, Seth Hastings, and George B. Upham.

THURSDAY, January 28.

The House went into a Committee of the Whole on the bill sent from the Senate, entitled “An act authorizing the discharge of Lawrence Erb from his confinement; and, after some time spent therein, the Committee rose, and reported the bill without amendment.

Ordered, That the said bill be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled “An act to regulate the collection of duties on imports and tonnage;”

H. OF R.

Proceedings.

JANUARY, 1802.

and, after some time spent therein, the Committee rose, and reported several amendments thereto; which were severally read twice, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. SPRIGG, from the committee appointed on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, to whom was referred, on the 11th instant, the memorial of Samuel Harvey Howard, register of the court of chancery in the State of Maryland, made a report; which was read and considered: Whereupon,

Resolved, That it is expedient to pass a law authorizing and directing the Marshal for the District of Columbia to collect, by distress and sale of the goods and chattels of the debtors, or by execution against their persons, all fees due from residents in the said territory, which have become due, or may become due, to the solicitors, attorneys, registers, clerks, and other officers of any courts in Maryland, on any suits, process, or proceedings, pending in the said courts on the twenty-seventh day of February, one thousand eight hundred and one.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. SPRIGG, Mr. BRENT, Mr. FOSTER, Mr. GREGG, Mr. PLATER, Mr. STRATTON, and Mr. BACON, do prepare and bring in the same.

Mr. EUSTIS, from the committee appointed on the seventh instant, to inquire and report whether any, and, if any, what, amendments are necessary in the laws respecting the fortifications of the harbors of the United States, made a report; which was read and considered: Whereupon,

Resolved, That no amendments in the laws aforesaid are necessary.

The House resolved itself into a Committee of the Whole on the report of a select committee of the nineteenth instant, on the resolutions of the Senate, in the form of joint resolutions of the two Houses, "in respect to Lieutenant Sterret, the officers, and crew of the United States' schooner *Enterprize*;" to which Committee of the whole House were also referred the said resolutions of the Senate; and, after some time spent therein, the Speaker resumed the Chair, and Mr. DAVIS reported that the Committee had had the said report and resolutions under consideration, and directed him to repeat to the House their disagreement to the said resolutions of the Senate, and their agreement to two resolutions contained in the report of the select committee thereupon, in the form of joint resolutions of the two Houses; which he delivered in at the Clerk's table.

The House then proceeded to consider the said report and resolutions: Whereupon, the resolutions of the Senate, to which the Committee of the whole House reported their disagreement, being twice read at the Clerk's table, in the words following, to wit:

"Resolved, by the Senate and House of Representatives

of the United States of America in Congress assembled, That, as a testimony of the high sense they entertain of the nautical skill and gallant conduct of Lieutenant Andrew Sterret, commander of the United States' schooner *Enterprize*, manifested in an engagement with, and in the capture of, a Tripolitan corsair, of superior force, in the Mediterranean sea, fitted out by the Bey of that Regency to harass the trade, capture the vessels, and enslave the citizens, of these States, the President of the United States be requested to present Lieutenant Sterret with a gold medal, with such suitable devices thereon, as he shall deem proper, and emblematic of that heroic action, and the mercy extended to a barbarous enemy, who three times struck his colors, and twice recommenced hostilities; an act of humanity, however unmerited, highly honorable to the American flag and nation; and that the President of the United States be also requested to present to each of the Lieutenants, Porter and Lawson, of the Navy, and Lieutenant Lane of the Marines, who were serving on board the *Enterprize* in the engagement, and contributed, by their gallant conduct, to the success of the day, a sword, with such suitable devices as the President may deem fit.

"Be it further resolved, In consideration of the intrepid behaviour of the crew of the *Enterprize*, under the orders of their gallant commander, and their receiving no prize money, the corsair being dismantled and released after her capture, that one month's pay, over and above the usual allowance, be paid to all the other officers, sailors, and marines, who were actually on board and engaged in that action; for the expenditure of which charge Congress will make the necessary appropriation."

The question was taken that the House do concur with the Committee of the whole House in their disagreement to the same, and resolved in the affirmative.

The resolutions contained in the report of the select committee, to which the Committee of the whole House reported their agreement, being twice read, in the words following, to wit:

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That they entertain a high sense of the gallant conduct of Lieutenant Sterret, and the other officers, seamen, and marines, on board the schooner *Enterprize*, in the capture of a Tripolitan corsair, of fourteen guns and eighty men.

"Resolved, That the President of the United States be requested to present to Lieutenant Sterret a sword, commemorative of the aforesaid heroic action; and that one month's extra pay be allowed to all the other officers, seamen, and marines, who were on board the *Enterprize* when the aforesaid action took place."

The question was taken that the House do concur with the Committee of the whole House in their agreement to the same, and resolved in the affirmative.

Ordered, That the said resolutions be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the twenty-fifth instant, to whom was referred the memorial of Lyon Lehman; and, after some time spent therein, the Committee rose, and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

JANUARY, 1802.

Proceedings.

H. OF R.

Resolved, That the prayer of the petition of the said Lyon Lehman is reasonable, and that the said petitioner ought to be refunded the sum of one thousand six hundred and eighty-four dollars, being the amount of duties he paid on the importation of three thousand five hundred rifles and carbines, and two hundred and eighty-seven pair of pistols, into the United States, in the year one thousand seven hundred and ninety-nine.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

Mr. GILES laid on the table a resolution to the following purport:

Resolved, That the census of the Northwestern Territory be referred to a committee, to consider whether any and what measures are necessary at this time relative to granting the people of that Territory a State Government, and to provide for their being admitted into the Union."

Mr. NICHOLSON offered a resolution to the following effect:

Resolved, That the Secretary of the Treasury be directed to report to this House what loan office and final settlement certificates are outstanding and not paid, and whether accounts have been so kept at the Treasury that provision can be made for paying them without subjecting the United States to be defrauded."

This resolution brought on a debate which occupied the remainder of the sitting. In the course of it a great diversity of opinion appeared, and the propriety of altering the statutes of limitation was discussed. A majority of the House appeared to be opposed to touching those statutes, and the resolution was finally rejected.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill for the relief of Lyon Lehman; which was read twice and committed to a Committee of the whole House to-morrow.

Ordered, That the committee appointed, on the twenty-second ultimo, to prepare and bring in a bill or bills for a revision and amendment of the laws for regulating the militia of the United States, have leave to sit during the sessions of the House.

On motion, it was

Resolved, That the Secretary of the Navy be directed to lay before this House a statement of the vessels now belonging to the Navy of the United States, with their present state of equipment, and the service in which they are, respectively, employed.

FRIDAY, January 29.

An engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein amended the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time; and, on a motion made and seconded, ordered to be recommitted to the Committee of Commerce and Manufactures.

The bill sent from the Senate, entitled "An act authorizing the discharge of Lawrence Erb from

his confinement," was read the third time and passed.

The resolutions in the form of joint resolutions of the two Houses, which were ordered to be engrossed on the twenty-eighth instant, "expressing the sense of Congress on the gallant conduct of Lieutenant Sterret, the officers, and crew, of the United States' schooner *Enterprize*," were brought in engrossed, and read the third time: Whereupon,

Resolved, That this House doth agree to the same, without amendment; and that the Clerk of this House do carry the said resolutions to the Senate, and desire their concurrence.

A petition of George Ash was presented to the House and read, praying that Congress will pass a law to confirm to the petitioner a right, in fee simple, to a certain quantity of land opposite the mouth of Kentucky river, in the Territory of the United States Northwest of the river, which has heretofore been granted to him by the Shawanese tribe of Indians, for various services rendered to the said tribe of Indians by the petitioner; and, also, that he may be entitled to the benefits and privileges of a citizen of the United States.—Referred to Mr. DAVIS, Mr. MATTOON, and Mr. GREGG; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Ordered, That Lewis Dupre, who presented a petition to this House on the fifth instant, relative to the principles of *perpetual motion*, which, as the petitioner suggests, have been discovered by him, have leave to withdraw his said petition.

Mr. J. C. SMITH, from the Committee of Claims, to whom was referred, on the twenty-fifth instant, the petition of John Brainerd and others, made a report; which was read: Whereupon,

Ordered, That the consideration of the said report be postponed until Monday next.

Mr. NICHOLSON moved the following resolution:

Resolved, That provision ought to be made by law for the payment of such loan office and final settlement certificates, as may have been lost, and for the payment or renewal of which application was made prior to the 12th of June, 1799."

Mr. NICHOLSON wished the resolution to be referred to the Committee of the Whole.

Mr. GRISWOLD suggested the propriety of making the first reference to the Committee of Claims, to ascertain facts; in which he was supported by Mr. BAYARD, and opposed by Mr. SOUTHARD.

The reference to a Committee of the Whole was lost; and then it was referred to the Committee of Claims.

On motion of Mr. GILES, it was

Resolved, That the census of the inhabitants of the Territory Northwest of the river Ohio be referred to a select committee, with instructions to report whether any, and what, measures ought, at this time, to be taken for enabling the people of the said Territory to form a State government for themselves, to be admitted into the Union upon the same terms with the original States.

Ordered, That Mr. GILES, Mr. GRISWOLD, Mr. ROBERT WILLIAMS, Mr. RUTLEDGE, Mr. JONES,

H. OF R.

Samuel Dexter.

FEBRUARY, 1802.

Mr. LEWIS R. MORRIS, and Mr. CONDIT, be appointed a committee, pursuant to the said resolution.

Petitions from sundry inhabitants of the Territory of the United States Northwest of the river Ohio, whose names are thereunto respectively subscribed, were presented to the House and read, praying that Congress will consider the present situation of the petitioners, and disagree to any law or plan that may be passed or devised, contrary to their benefit and accommodation, and which may tend to a separation of the said Territory into one or more divisions, in opposition to the wishes and interest of the petitioners, and other inhabitants of the said Territory; also, that Congress will be pleased to consider what measures may, at this time, be proper to be taken for the establishment of a State government in the said Territory, and its admission into the Union.

Ordered, That the said petitions, together with such parts of the petition of sundry other inhabitants of the said Territory, as relate to the admission of new States into the Union, whenever it may be deemed expedient by Congress, presented on the twentieth, twenty-fifth, and twenty-seventh instant, be referred to the committee last appointed; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A memorial of George Helmbold, jun., of the city of Philadelphia, was presented to the House and read, praying that Congress will, by law, extend to all paintings, portraits, and engravings, executed and published within the United States, the benefits and privileges contained in the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," passed the thirty-first day of May, one thousand seven hundred and ninety.

Ordered, That the said memorial be referred to Mr. JONES, Mr. CUTLER, and Mr. MITCHILL; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The bill authorizing the payment of two thousand and eight hundred dollars to Philip Sloan; was taken up in Committee of the Whole, and ordered to be engrossed, and read the third time on Monday, next.

Resolved, That the Committee of Revisal and Unfinished Business be directed to inquire into the expediency of continuing in force, for a longer time, the whole, or any part of an act, entitled "An act to augment the salaries of certain officers therein mentioned," passed the second of March, one thousand seven hundred and ninety-nine, which act will expire the second of March next, and that the committee be authorized to report such alterations in the salaries of said officers as to them may seem advisable; and that said committee report by bill, or otherwise.

Mr. GILES said as a report was soon expected from the Committee of Ways and Means, it was important to ascertain the sense of Congress on

the continuance of an establishment attended with a considerable expense. He said he alluded to the Mint. If it should appear that this establishment cost more than the benefits derived from it, he presumed it would be discontinued. He, therefore, submitted a resolution, declaring that the several acts in relation to the Mint ought to be repealed.

Ordered to lie on the table.

MONDAY, February 1.

An engrossed bill authorizing the payment of two thousand and eight hundred dollars to Philip Sloan was read the third time, and passed.

Mr. LEWIS R. MORRIS, one of the members for the State of Vermont, presented to the House two resolutions of the General Assembly of the said State, agreed to by the two branches of the Legislature, on the nineteenth and twenty-third of October, one thousand eight hundred and one, proposing certain amendments to the Constitution of the United States in the case of the choice of Electors for President and Vice President of the United States, and of Representatives to Congress from the States, respectively, which were read, and ordered to lie on the table.

On motion, it was

Ordered, That the committee appointed, on the thirty-first of December last, on "so much of the Message of the President of the United States as relate to naval preparations, and the establishment of sites for naval purposes," be authorized to cause such documents to be printed for the use of the members, as may be deemed proper by the said committee, previous to the presentation of the same to the House.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the protection of the commerce and seamen of the United States, in the Mediterranean and adjoining seas," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill last mentioned: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to a Committee of the Whole to-morrow.

The SPEAKER laid before the House a letter from the Secretary of the Navy, enclosing a statement of the vessels now belonging to the Navy of the United States, with their present state of equipment, and the service in which they are respectively employed, in pursuance of a resolution of the House of the twenty-eighth ultimo; which were read and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill to prevent intrusion on the public lands, and for other purposes; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

SAMUEL DEXTER.

A bill for the settlement of the account of Samuel Dexter, Esq., relative to the suit instituted by Joseph Hodgson, was read a third time.

FEBRUARY, 1802.

Proceedings.

H. OF R.

Mr. ALSTON moved to postpone the farther consideration of this bill, until the first Monday in December next. He thought it altogether improper to do anything in the business at that time.

Mr. EUSTIS, opposed the postponement and stated the grounds on which the committee went who reported the bill. The suit he said was in fact the suit of the Government. Mr. Dexter ought to be indemnified for his expense and time.

Mr. GILES advocated the postponement.

Mr. BAYARD observed that the principles had been correctly stated by the gentleman from Massachusetts. The suit was substantially the suit of the Government, and, said Mr. B., I ask if anything can be more flagrantly wrong, more iniquitously unjust, than to allow the suit to be the suit of the United States, and yet, because we have the power, deny to pay the expenses.

Mr. BAYARD, spoke at some length in favor of the bill and against a postponement, and was followed by Messrs. GRISWOLD, RUTLEDGE, T. MORRIS, and HASTINGS, on the same side. Messrs. HOLLAND, BACON, and SPRIGG, spoke in favor of postponing. The question for postponement was then put—for it 36, against it 56.

It was then referred to a Committee of the whole House, and Mr. J. C. SMITH, took the Chair. The bill was so amended as to authorize the accounting officers of the Treasury to settle Mr. Dexter's account for the expenses incurred by the suit, and for his time and personal expenses, not exceeding six dollars a day, for the time necessarily employed in attending to the suit and in travelling. In the House the amendment was agreed to, and ordered to be engrossed for a third reading—51 voting in favor of it.

Mr. GILES called up his resolution respecting the Mint, which he moved should be referred to the Committee of the Whole; which was agreed to, and made the order of the day for to-morrow.

TUESDAY, February 2.

An engrossed bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the third time and passed.

Mr. SPRIGG, from the committee appointed, presented a bill for the relief of Samuel Harvey Howard, and other officers of the courts of Maryland; which was twice read and committed to a Committee of the whole House to-morrow.

On motion, it was

Resolved, That the President of the United States be requested to inform this House whether any, and what, measures have been taken for treating with the Indians south of the Ohio, in consequence of an act of Congress, passed the thirteenth of May, one thousand eight hundred, entitled "An act to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians."

Ordered, That Mr. STANLEY and Mr. DAWSON be appointed a committee to present the foregoing resolution to the President of the United States.

The House resolved itself into a Committee of

the Whole on the amendments of the Senate to the bill, entitled "An act for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas;" and, after some time spent therein, the Committee rose and reported their agreement to the same, without amendment.

The House then proceeded to consider the said amendments; and, on the question that the House do concur with the Committee of the Whole in their agreement to the same, it was resolved in the affirmative.

The House again resolved itself into a Committee of the Whole on the bill to prevent intrusion on the public lands, and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be recommitted to the Committee of Ways and Means.

A Message was received from the President of the United States transmitting returns of arms, fortifications, &c.

The said Message, and the documents accompanying the same, were read: whereupon,

Ordered, That such parts thereof as relate to the military stores of the United States be referred to the committee appointed on the 22d of December last, on the same subject.

Ordered, That the residue of the said Message do lie on the table.

On motion, it was

Resolved, That the Secretary of the Navy be directed to furnish this House with copies of any documents in his office relative to the object of the voyage or crews of the frigate *Insurgent* and brigantine *Pickering*, lately belonging to the Navy of the United States; and, also, to state the time when, and the place from whence, they sailed, together with any other information respecting their loss, which it may be in his power to furnish.

WEDNESDAY, February 3.

Mr. DAVIS, one of the members from the State of Kentucky, presented to the House a letter from the Secretary of the Treasury, addressed to him as Chairman of the committee to whom were referred, on the eighth of December last, and the eighteenth, twenty-fifth, and twenty-sixth ultimo, the petition of James McCashen and others, the memorials of John Cleves Symmes, and of George Turner, and the petitions of sundry purchasers and settlers on the lands originally contracted for by John Cleves Symmes, between the Great and Little Miami rivers, enclosing a letter and report from the Receiver of the Land Office at Cincinnati, respecting the lands applied for under an act of the last session of Congress, giving a pre-emption right to certain purchasers under John Cleves Symmes; which were read, and ordered to lie on the table.

On motion, it was

Ordered, That the report of the committee of

the thirtieth of December last, appointed on the fourteenth of the same month, "to inquire into the expediency or inexpediency of giving further time to persons entitled to military land warrants to obtain and locate the same; and, also, to report what provision ought to be made by law to authorize the Secretary of War to issue military land warrants, and duplicates of the same, where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud," which lay on the table, be committed to a Committee of the Whole House immediately.

The House accordingly resolved itself into the said committee; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

Resolved, That further time ought to be given to the holders or proprietors of military land warrants to register and locate the same.

Resolved, That provision ought to be made by law, authorizing the holders of warrants, or certificates in the nature of warrants, under an hundred acres, to locate the same.

Resolved, That all warrants or certificates located on a less quantity than four thousand acres, shall be located on the unlocated parts of the fifty quarter townships and fractional quarter townships.

Resolved, That warrants, or certificates in the nature of warrants, which have or shall issue for a quantity less than an hundred acres, shall be located on the fractional parts of lots that are less than an hundred acres, and in no other place.

Resolved, That the holders or proprietors of warrants for military services, who shall locate the same on the quarter townships, or fractional part of quarter townships, after the — day of — next, shall obtain patents in their own name.

Ordered, That a bill or bills be brought in pursuant to the said resolutions, and that Mr. DAVIS, Mr. JACKSON, Mr. TALLMADGE, Mr. DENNIS, and Mr. FEARING, do prepare and bring in the same.

The House then went into a Committee of the Whole on the bill for the relief of Lyon Lehman.

The Committee rose and reported the same without amendment; and the bill was ordered to be engrossed, and read the third time to-morrow.

The House went into a Committee of the Whole on the bill for the relief of Daniel W. Coxe and others; and, after some time spent therein, the Committee rose without coming to any decision.

THURSDAY, February 4.

An engrossed bill for the relief of Lyman Lehman was read the third time, and passed.

A remonstrance of sundry inhabitants within the jurisdiction of the Corporation of Georgetown, in the District of Columbia, was presented to the House and read, praying that Congress will not pass into a law the bill for establishing the Territory of Columbia, now pending before this House; or that the said bill may be so amended or modified as to augment the powers of the Corporation of Georgetown, for the convenience and benefit of the remonstrants, and the other inhabitants of

the said District.—Referred to the Committee of the Whole House appointed on the twenty-sixth ultimo, to whom was committed the bill referred to in the said remonstrance.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes;" to which they desire the concurrence of this House.

The House went into a Committee of the Whole on the bill for the relief of Daniel W. Coxe and others; and, after some time spent therein, the Committee rose and reported the bill with an amendment.

The House then proceeded to the consideration of the said bill and amendment: Whereupon, a motion was made, and the question being put, that the said bill, with the amendment, be committed to the consideration of a Committee of the whole House, it passed in the negative.

Ordered, That the farther consideration of the said bill and amendment be postponed until Monday next.

Mr. Thomas moved the following resolution:

"*Resolved*, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances, which, by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States."

Ordered, That the said motion be committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Navy, enclosing copies of the sailing orders given to the commanders of the frigate *Insurgent* and brigantine *Pickering*, transmitted in pursuance of a resolution of the second instant; which were read, and ordered to lie on the table.

JUDICIARY BILL.

The bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes," was read a first time, and Mr. GILES moved that it should have a second reading.

Mr. BAYARD supposed the object in having it read a second time was for the purpose of committing the bill. He thought it should be committed to the select committee appointed some weeks ago to take this subject under consideration. Mr. B. said it was not to produce delay that he proposed this. On common occasions, there was no doubt a subject would be so disposed of. He had no wish to affect any favorite plan gentlemen have determined on, by proposing this reference.

Mr. RANDOLPH thought it proper the principle of the bill should be settled in Committee of the Whole, and moved a reference to that effect.

Mr. GILES was in favor of its being referred to a Committee of the Whole; there was no detail, he said, in the bill. If it should be referred to the committee proposed, there was no prospect

FEBRUARY, 1802.

Judiciary System.

H. OF R.

that they would in any reasonable time make a report. One of the gentlemen appointed on that committee had been prevented by indisposition from even attending it, and there was very little prospect of that committee coming to any agreement without that member.

[Mr. G. must have alluded to the members being equally divided in political sentiments.]

But, said Mr. G., this is not my only reason for wishing it to go to the Committee of the Whole. Gentlemen are mistaken if they think there has been any concert on this subject; or, if there has been any, it is wholly without my knowledge.

He wished the bill to be taken up on Monday; there had been great agitation in the community excited by the subject of that bill. It had been very ably discussed in the Senate, and it was very necessary to decide this great Constitutional question in this House as early as would be consistent with the importance of the subject; because he believed the agitation produced in the country would subside as soon as the business was settled in this House.

Mr. RUTLEDGE said he was really surprised at this motion's coming from the gentleman from Virginia, (Mr. RANDOLPH,) who had moved the resolution, in consequence of which the select committee had been raised on the subject of this bill. The Chairman of that committee had never called the members together, but let the subject lie dormant, because he knew it was before the other branch of the Legislature, and waited for a decision there; and now, when it has come to us, that gentleman is for sending it to another committee, without first moving to discharge the select committee. He hoped gentlemen in favor of this bill would not whip on with such unusual speed because they are the majority.

Mr. R. said he really could not understand another gentleman from Virginia, (Mr. GILES,) when he says, to refer the bill to the select committee, will be to delay the business, because there would be a tie in the committee, the umpire being detained by indisposition from attending. If this tie was in the House instead of the committee, there would be some grounds for the objection. But if there should be any appearance of delay in the committee, the majority of this House would discharge them immediately.

Mr. R. was disposed to adhere to the forms usually observed; it was the most correct as well as fairest mode of transacting business.

Mr. GRISWOLD agreed that in Committee of the Whole was the proper place to discuss and decide great and general principles. But in this bill there were considerable details, and was it not, he asked, more correct to send it to a select committee to settle that detail, which could not be properly done in Committee of the Whole? As to the absence of one gentleman on the select committee, that could be easily remedied by appointing another in his place.

Suppose the House should go into Committee on the bill, and a majority say they like the principle but do not the detail, must it not then be referred to a select committee to settle the detail?

Mr. G. said it had been the uniform practice of the House to refer in the first instance, and he hoped the House would not deviate from it. If, instead of this bill, there was a resolution offered to this House proposing to repeal the two laws of last session respecting the Judiciary, then it would be proper to decide on it first in Committee of the Whole.

Mr. SMILIE advocated a reference to the Committee of the Whole.

Mr. GODDARD expressed his solicitude that the bill should go first to the select committee, that everything like the pride of party or the pride of opinion might be prevented from attaching itself to this bill. When the select committee reported, and that was taken up in Committee of the Whole, the discussion would be entered upon with more candor, and gentlemen would be more likely to be open to conviction.

Mr. MILLEDGE was in favor of the motion; he wished to call the attention of the House to two instances where bills had been reported by select committees without the principles being settled in Committee of the Whole, and he begged gentlemen to call to mind the consequence of that mode of proceeding, and the great delay it occasioned.

Mr. S. SMITH observed, as there had been something like censure thrown on the committee appointed on the subject of the Judiciary, he would mention some reasons why that committee could not be expected to have considered the subject very fully. Some considerable time after the appointment of that committee, the Chairman (Mr. RANDOLPH) informed the House that he was Chairman and member of so many committees that he could not attend to them all, and asked to be excused from serving on this committee; when another gentleman was appointed in his place, so that the subject could only be considered as being before the committee from about the 20th of January.

Mr. GILES said he had been in some measure anticipated by the gentleman last up. It had been urged, give the bill to a select committee first to settle the detail; when it comes forward here, if a majority should be opposed to the principle, he would ask whether the reference in such a case would not be wholly unnecessary? The principle, he contended, should first be settled in a Committee of the Whole.

The select committee to whom some gentlemen wished to refer this bill, had, since the 20th of January, had an important and the most voluminous subject under consideration that would come before the House the present year. He alluded to the petition of the Wyoming claimants and the documents accompanying it, which would take up the time of the committee for two weeks to read them through.

Mr. G. said, that if party sensations ever could be buried, the subject of the bill before them was the most proper for making an effort, and have that disposition discovered. Party triumph, he agreed, had too long predominated, and he hoped the time would soon come when such triumph

would cease. He thought this great Constitutional subject had come forward for decision at a most fortunate period. There was a general tranquillity in the country and a fair discussion could be had. The whole bill was a single proposition, to wit, Shall two laws of last session be repealed? and it could be very well determined in a Committee of the Whole.

Mr. DANA acknowledged himself particularly pleased with the sentiments of the gentleman who had just sat down. He thought it highly interesting to our common country that the triumph of party should be checked on this occasion. The most likely mode of checking such triumph would be that the whole business should proceed in its usual course, and that the majority should not precipitate it excessively. Some most important subjects had been delayed by the members not being in possession of the documents. This subject ought to come before them in its least exceptionable shape, that discussion may be had with an understanding of the subject. It had been said this bill from the Senate was a single proposition, because it only proposes to repeal two laws. Gentlemen might call it a single proposition if it were proposed that the Constitution should be destroyed. Though it is called a single proposition, it is not a simple one; on the contrary it is one of the most complex. It is already determined the Judiciary system shall be abolished, that it shall swallow up every thing that comes in its way; yet he thought it ought to be done in such a way as to do as little injury to others as possible.

Mr. BAYARD.—It is urged we should go into Committee of the Whole to settle the principle of the bill. There is no principle in the bill. I do not mean any play upon the words. If a single insulated principle were to be settled, the course proposed by gentlemen would be correct. But we are going to decide a general question, involving vast details. If gentlemen will unfetter themselves from the manacles of party prejudice, they will on examination find it the correct course that this bill should go to the select committee.

The object is to repeal the law of last session. Are there six gentlemen in this House who can say what that law is? Is there one who can tell me even how many sections there are in it, or what is contained in a single section? Is it possible that the blindness of party spirit can say we will repeal a law though we do not know what it is? Would you not on any other subject send a bill repealing very complex laws to a select committee?

You could scarcely find a section of any law having so much detail as the first section of this bill; the second has also much and the third more detail. It is not easy to say what acts would be repealed by this bill. The laws of the last session were not confined to merely establishing new courts and new judges, but there were many wholesome amendments to the old system incorporated in these laws, which, if you repeal by this repealing act, you will be obliged again to establish in some other way.

A month of close application, by the most industrious person could not make him master of

this subject, so as to see the operation of this bill on those it is intended to affect. And are gentlemen prepared to say they will repeal those laws even if on examination they find them useful?

In another more important detail, I will pledge myself to prove it defective:—with respect to suits existing originally in the old court, by the laws of last session, brought into the new court, and now transferred to the old court again. Can gentlemen say no criminal will escape justice, and no man lose his suit by passing this bill? There never was a general question involving more detail than this bill.

Gentlemen are even frustrating their own object. What is the object of gentlemen? They will lose no time by the mode we propose, we shall gain none. I believe the laws of last session will be repealed; they are considered as repealed through the country. A gentleman has said there was no concert on this subject; I do not know that it has been debated in what are called caucuses. [Mr. RANDOLPH called to order. The SPEAKER decided against him.] Mr. B. proceeded: I was about to say, Mr. Speaker, there was no need of concert in the business. I was not blaming these meetings, in what are called caucuses. I do not see why thirty or forty members may not meet together to talk on politics, or any other more entertaining subject, as well as a smaller number. I was astonished to hear the gentleman from Virginia (Mr. GILES) say what he did about the agitation of the public mind. Does he tremble at the agitation this subject has excited? Does his security consist in the apathy of public sentiment? The public mind should be agitated on this question; the people should know what we are about. If they have any thing to say, I wish to hear it. I wish it to go to the people, and even that it should be decided by their vote. This is not a measure originating from the people; if it were, the more it should be agitated by the people the better it would be for that gentleman.

I meant no reflection on the select committee to whom the subject of this bill was referred. I was not dissatisfied with them, but I am dissatisfied with the excuse the gentleman from Maryland has made for them. I am sorry he implicated the Speaker in that apology, who, it must be presumed, knew what committees the gentleman from Virginia (Mr. RANDOLPH) was chairman of, and of how many he was a member when appointed chairman of another, from attending which he very properly afterwards requested to be excused. It is proper this bill should go to the select committee, that the general question may be so presented to the House, as that it may be fairly discussed.

The question on referring the bill to the Committee of the Whole was then taken, and carried—54 voting in favor of it.

When the SPEAKER asked, "For what day shall it be made the order?" Mr. DAVIS proposed Monday week.

Mr. GILES believed the business of the session would not progress until this subject was decided; he wished it the order for Thursday next.

FEBRUARY, 1802.

Proceedings.

H. OF R.

Mr. BAYARD hoped Monday week would be agreed to; he had not heard much of the debate in the Senate, or read a single speech. He wished time to read the speeches. He knew they could only rely on the candor and accommodation of gentlemen for this indulgence. As to those who had made up their minds upon the subject, and who did not intend to speak, they could not have a common feeling with him on this occasion. If gentlemen would allow them time to prepare, they would meet the friends of the bill, and discuss its merits with all that calmness and deliberation on their part that could be expected. But if they were hurried into the subject, he feared, that with the exercise of all their Christian patience and forbearance, it would not be possible.

Mr. NICHOLSON said, as the gentleman from Delaware has promised, on the part of his friends, to meet us in the discussion of this question with a great deal of forbearance, like good Christians, if it be postponed until Monday week, I shall vote for that day, and hope it will be carried.

The question for Monday week was then put and carried—54 voting for it.

FRIDAY, February 5.

Mr. SMITH, from the Committee of Commerce and Manufactures, to whom was recommitted, on the twenty-ninth ultimo, an engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," reported an amendment thereto; which was twice read, and, together with the said bill, ordered to be committed to a Committee of the Whole House to-day.

A memorial of sundry citizens of the United States, and resident merchants of the city of Baltimore, and State of Maryland, was presented to the House and read, praying relief in the case of numerous and heavy losses sustained by the memorialists, in consequence of the illegal capture and confiscation of their property, under the authority of the French Government, prior to the promulgation of the late Convention between the United States and France; in the provisions of which compact the memorialists discover an unqualified surrender of their claims, instead of the redress which they expected to obtain.—Referred to Mr. GILES, Mr. MITCHELL, Mr. EUSTIS, Mr. LOWNDES, Mr. MILLEDGE, Mr. TALLMADGE, Mr. ROBERT WILLIAMS, Mr. DAVIS, and Mr. GREGG; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On a motion made and seconded that the House do come to the following resolutions:

"Resolved, That the President of the United States be, and he is hereby, authorized and empowered to appoint one or more Commissioners, as he may deem necessary, on the part of the United States, to adjust, on principles of equity, the existing disputes between the Commissioners of the City of Washington and the Trustees of the city property, original proprietors, and other persons who conceive themselves injured by the

several alterations which, from time to time, have been made in the plan of the city; and, having adjusted the same, that he be, and he is hereby, requested to endeavor to procure from the trustees aforesaid, a conveyance to the United States of the streets, squares, and other public grounds therein.

"Resolved, That the President of the United States be, and he is hereby, requested to cause to be prepared and laid before Congress, for their sanction, a plan of the City of Washington, conforming, as nearly as may be, to the original design thereof, except where, in consequence of the alterations made in the same, the rights of individuals, the principles of justice, and the manifest interest of the United States, may require a deviation."

Ordered, That the said motion be referred to Mr. DENNIS, Mr. JOHN TALIAFERRO, Jr., Mr. GRISWOLD, Mr. SPRIGG, and Mr. DAWSON; to examine and report their opinion thereupon to the House.

The House resolved itself into a Committee of the whole House on the engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" and, after some time spent therein, the Committee rose and reported their agreement to the amendment proposed by the Committee of Commerce and Manufactures thereupon; which was again read, and, on the question put thereupon, agreed to by the House; and the bill, with the amendment, was ordered to be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the whole House on the bill for the relief of Isaac Zane; and, after some time spent therein, the Committee rose and reported progress; and on the question that the Committee of the whole House have leave to sit again on the said bill, it passed in the negative.

Ordered, That the Committee of the whole House be discharged from the farther consideration thereof; and that the said bill be recommitted to Mr. JACKSON, Mr. FEARING, Mr. VAN HORNE, Mr. DAVIS, and Mr. BAYARD.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making certain partial appropriations for the year one thousand eight hundred and two; which was twice read and committed to a Committee of the whole House on Monday next.

On motion, of Mr. GILES, it was

Resolved, That the committee to whom was referred a Message from the President of the United States, of the eleventh ultimo, accompanying a memorial and letter to him, from the Commissioners of the City of Washington, be instructed to inquire into the expediency of discontinuing the offices of the Commissioners of the said city; and to report by bill or otherwise.

MONDAY, February 8.

An engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time.

H. OF R.

Imprisonment for Debt—The Mint.

FEBRUARY, 1802.

Ordered, That the further consideration of the said bill be postponed until to-morrow.

A memorial of sundry merchants of the city of Philadelphia was presented to the House and read, praying relief in the case of injuries inflicted on the commerce of the memorialists, during the late European war, by the predatory cruisers belonging to the French Republic.—Referred to the committee appointed on the fifth instant, to whom was referred a memorial of sundry merchants of the city of Baltimore, to the same effect.

A memorial of sundry citizens of the city and county of Philadelphia, in the State of Pennsylvania, was presented to the House and read, praying a repeal of the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States," for certain reasons therein specified.—Referred to the Committee of the whole House to whom was committed, on the fourth instant the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. SOUTHARD, from the committee to whom was referred, on the eleventh ultimo, the petition of Thomas Bruff, of Joseph, in the State of Maryland, relative to the principles of *perpetual motion*, which, as the petitioner suggests, have been discovered by him, made a report; which was read and considered: Whereupon,

Resolved, That the petitioner have leave to withdraw his petition.

Mr. D. HEISTER, from the committee appointed on the 22d of December last, presented a bill supplementary to an act, entitled "An act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States," passed the eighth of May, one thousand seven hundred and ninety-two; which was read twice and committed to a Committee of the whole House on Thursday next.

Mr. MITCHILL, from the committee to whom was referred, on the thirty-first of December last, so much of the Message of the President of the United States as relates to "naval preparations, and the establishment of sites for naval purposes," made a report; which was read, and ordered to be committed to a Committee of the whole House on Wednesday next.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom was recommitted, on the twenty-second ultimo, the bill to amend an act, entitled "An act to lay and collect a direct tax," reported an amendatory bill to amend an act, entitled "An act to lay and collect a direct tax within the United States;" which was read twice and committed to a Committee of the whole House on Wednesday next.

IMPRISONMENT FOR DEBT.

Mr. SMILIE called up his resolution that a committee be appointed to revise the laws respecting imprisonment for debts due the United States. His objects, he said, were two; to secure the debt-

or's property, and to inflict some penalty or provide some remedy instead of imprisonment for life.

Mr. RUTLEDGE was opposed to imprisonment for life, where the debtor gave up his whole property, and was unable to pay all. He had known, in South Carolina, revenue officers imprisoned for debts due the United States, who had been many years confined; men of good character, men of honesty, but who, through ignorance of transacting certain business, or their misfortunes, were unable to pay. He knew an individual of that State who had applied to that House for relief; his petition was referred to the Secretary of the Treasury; the Secretary felt a delicacy in interfering in the case; the petition was not granted; and the person had now been in jail five years, though his inability to pay did not arise from having wasted the public money, or from aught but misfortune; for he was acknowledged to be a man of good character. He was averse to such cruelty. Hence the necessity of making some provision that the innocent, when distinctions can, as in most instances, be made, may not be subjected to cruel punishments, that were of no benefit to the United States. Why send him to jail? Why lock him up there? Why prevent his being able to support his family?

Mr. SMILIE.—It is the case that when you exceed in making your laws what is reasonable, those laws, as the present concerning debtors to the United States, will not be executed. The present law cannot be put in execution. He wished some sufficient penalty. This was not the proper stage to give his sentiments; were it, he should say, he thought the defaulter ought to give up the property, and perhaps be imprisoned a period. But the Legislature are not the proper judges, and ought not to interfere; the Legislative and Judicial departments should be kept separate. We want some uniform law, operating on all according to their demerit.

The subject was postponed till to-morrow.

THE MINT.

The House, resolved itself into a Committee of the Whole on the motion referred to them, on the first instant, viz:

Resolved, That so much of the acts, the one entitled "An act establishing a Mint and regulating the coins of the United States," the other an act, entitled "An act supplementary to the act establishing a Mint, and regulating the coins of the United States," as relate to the establishing a Mint, ought to be repealed.

Mr. GILES said, he had seen a bill making appropriation for continuing the Mint Establishment; he knew it was questionable whether or not it was intended to repeal the law creating that establishment; his wish was to discover the opinions of the House on the subject. He had ever been opposed to the establishment from the beginning; he thought we ought to have no establishment the expenses of which surpassed the profit—that is, he would have no sinecures, or persons receiving money without rendering adequate services.

FEBRUARY, 1802.

The Mint.

H. OF R.

Mr. G. here showed the deficiencies of the Mint Establishment. He further observed that the gold and silver coined in the Mint were better than the coins of other countries, and were much of them used by jewellers and silversmiths. The machinery of the Mint, he was informed, wanted repair; he had also been informed that the machinery might be disposed of to advantage to the Bank of the United States; and, perhaps, that bank might coin for us, and save much expense. On the whole, he was firm in the opinion that it was a needless expense, and ought not to be continued.

Mr. DANA.—If the standard coin is better than that of other countries, we have only to make the proper alterations. The question is, whether we shall have one of our own? By not having one of our own, we shall, as we have been before, be exposed to many disadvantages, to many frauds from the circulation of base metal, especially copper.

Mr. LOWNDES.—We proceed with too much precipitation. This establishment was made after mature deliberation, let it not be abolished without hesitation. We ought to make inquiry; we want information on the subject. If, after such information on the subject is received as will enable us to vote understandingly, it shall appear improper to continue the establishment, I shall be as forward as any one in repealing the law by which it was made. I am not in favor of sinecures, more than the gentleman from Virginia, or any other member. I will go as far in preventing sinecures, or the payment of money where services adequate are not rendered, as any man. I would not stop here; where such sinecures appear, I will join to abolish them. The duties of the Secretary of War, especially since the late reduction of the Army, are now very inconsiderable; the duties of the Secretary of the Navy and those of the Secretary of War can easily be performed by one officer. [Called to order.] I wish delay till we shall receive the necessary information on the subject.

Mr. S. SMITH said, he believed the books now in the House, and the last report of the Director of the Mint, furnished all the information necessary.

Mr. LOWNDES observed, that there has been no report this session. A report appears the more necessary at this time, when the abolishment is contemplated.

Mr. GILES said, by the report of last session we have or can receive information sufficient. By that and other reports it will be found that the establishment is expensive, is unprofitable, and will probably continue so. I can see no need for revising. I am for abolishing altogether. Perhaps the coinage may be done by the Bank of the United States, if it be necessary that it should be done. I can see no propriety in continuing the establishment. The gentleman from Connecticut speaks of uniting the office of Secretary of War and of the Navy. [Called to order.]

Mr. HOLLAND thought gentlemen had all made up their opinions; it was, plainly, expensive and unprofitable. He should vote for repealing.

Mr. MITCHILL spoke at considerable length, discovering much ingenuity and acquaintance with the subject. He was against a total repeal, especially as we should be subjected to great inconveniences from abolishing the copper coinage.

Mr. RUTLEDGE.—If it be true that it is useless, all will agree in abolishing. It has heretofore been customary to show, when about to abolish an establishment, what the state of that establishment was. No such statement has been given. Two years ago it was attempted to abolish this establishment, all suitable information was received at that time, and the bill for repealing was lost. Shall we proceed to act now without information?

Mr. R. regretted that he was unable to hear the gentleman from New York, (Mr. MITCHILL.) He perceived that that gentleman had viewed the subject thoroughly and found that it would be improper to repeal; he hoped the observations of that gentleman would have due effect on the opinion of the House. Mr. R. wished the Committee to rise, without leave to sit again, that the matter might be referred to a select committee, who could examine the subject, and would be enabled to make a report, founded on a knowledge of facts. He would, however, declare that he had no predilection for the establishment, nor any wish to have sinecures, but he had not sufficient knowledge of the present state of the establishment to vote understandingly.

Mr. GRISWOLD.—It is admitted there are advantages arising from the establishment. It has driven from circulation the base gold of Germany, and English silver. I had hoped the gentleman who introduced this resolution would have given us a statement of the present situation of the Mint. He was unable to decide till he should have more knowledge of the subject. If the advantages exceed the expense, he should be for continuing; if not, for repealing.

Mr. S. SMITH.—If we could gain any further information, he should be for the Committee's rising; but he thought no further information of importance could be had. Mr. S. went into a brief examination of the expense and the profits. Among other objections he said that it cost half a dollar to coin a cent.

Mr. S. observed that we might, at much less expense than as now, send to Birmingham, England, to have our copper coined. If there were a probability of our having mines of our own, there might be some pretext for their continuance.

Perhaps a national pride, or national dignity, may be the inducement. Such motives did not actuate him. He had as high sense of national pride as any, but did not imagine that this was any mark of national dignity. The small States of Germany still coin money, so does Scotland, but he did not think such coinage any mark of their independence.

Mr. DANA.—If we allow the gentleman to attribute motives to others, he can set up his men of straw as easily as we can pull them down. We have no such Scotch pride, as represented. It is important that we should have some Mint

H. OF R.

The Mint.

FEBRUARY, 1802.

establishment. We ought not to have a fluctuating medium. Whether the present be the best mode of coinage I know not. I am willing to make any revisions that may be found necessary. The gentleman from New York has gone into the matter fully—has said much to confirm me in the opinion that this establishment is necessary.

The gentleman from Maryland has told us that the coinage of every cent costs half a dollar; this is an assertion that he thought would have exceeded even the legislative intrepidity of that gentleman.

Mr. RUTLEDGE.—The gentleman from Maryland has said much on the subject, all of which, he believed, could be answered in a few words. Make your copper lighter, if it ought to be; give alloy to your gold, if that of other countries is not so valuable. Let the subject go to a select committee, who can see what alterations can and ought to be made; what offices reduced; what departments combined, or, perhaps, what parts of the establishment may be abolished.

Mr. ELMER.—He hoped it would go to a committee. We want information. We ought well to consider the inconveniences that may arise from abolishing. If more evils than benefits grow out of the establishment, he should be for abolishing; if more benefits than disadvantages, he should wish it to continue. But he wanted information. He was not then content to decide.

Mr. MITCHELL.—We were again unable fully to hear Mr. M. His observations appeared to be mostly directed to the subject of copper coinage, and to show the necessity of coining our own. He corrected Mr. S. SMITH with respect to his statement of Scotland's coining her own money. The place where the coining was done, to which Mr. S. alluded was a place of confinement for convicts—he had been there and well knew. Mr. M. went largely into the subject of base copper coinage; the danger of great disadvantages arising to us from the introduction of it here, unless we had copper coinage of our own to prevent it.

Mr. S. SMITH.—He could not see how we should be able to obtain further information. He would explain as to what the gentleman from Connecticut had said. His assertion of the expense (that every cent costs half a dollar) was a *lapsus lingue*; he did not mean to have it understood as literally true.

Mr. BAYARD.—It was not to be supposed that because gentlemen wished the Committee to rise, they were opposed to the resolution—the object was to have the subject go to a select committee, who might give it an attentive examination, from documents which they might, but which were not now obtained. In addition to the learned and cogent observations of the gentleman from New York, he would ask what he had to guard against the introduction of base coins? We had been, and we should again be, liable to impositions, especially from the circulation of Spanish gold.

Another consideration was, the necessity of some regulated medium in small change. Copper had heretofore passed two, four, and six for one. There were persons whose sole business was

speculating in these base metals. Coppers were brought by the cask from Birmingham; after a short time circulating their baseness was discovered—their value sunk, and the loss generally fell on the poorer class of citizens. The poorest of the people were in this manner taxed in one year far more than the amount of supporting this establishment.

Mr. B. duly appreciated the knowledge and talents of the gentleman who introduced this resolution. They may be equal to the united talents and knowledge of a committee of five; yet such was not common. It was not usual for one to inquire so deeply—so fully—as a committee of several.

The gentleman from Maryland informs us that we can send to Birmingham to have our coining done; true, but the gentleman might have gone much further; the expenses of legislation are great; we may also send to Westminster to have our laws made, and thus save the expense of four or five hundred thousand dollars. Our own coinage is moreover emblematic of our sovereignty; this consideration ought to have some effect.

If on inquiry it should be found proper to abolish wholly the institution, he should readily join; but he was not ready without reflection or distinction to go any length with those who seem actuated only by an indiscriminate rage for pulling down and destroying establishments.

Mr. RANDOLPH.—He thought the banks were sufficient to prevent the circulation of base money. He asserted that nineteen-twentieths of the silver in circulation was not coinage of our own, but Spanish milled dollars and their parts. He could not see how our sovereignty was affected by having our coinage done elsewhere, any more than by the purchase of cordage or the casting of cannon.

The gentleman from Delaware laughs at the idea of going to Westminster for our laws. Mr. R. was surprised at this. He had thought the gentleman a great advocate for such laws—that it was his favorite doctrine to go there for our laws. The gentleman had lately taken up the cause of the poor—a cause with which he is just becoming acquainted. Should those who had always advocated their cause become hardened by prosperity, and forget the professions which had gained them the confidence of the people, he hoped and expected they should be dismissed by them.

Mr. R. begged pardon for having detained the Committee, but as it seemed the order of the day when a subject was started to consume the whole day, he believed he was not out of order.

Mr. GILES.—In the discussion of this subject gentlemen had branched out exceedingly, but he believed it all came to one point—the want of information. He had some days since notified that he should introduce the resolution. He was satisfied no further information of consequence would be obtained, and there is already sufficient to enable us to judge correctly. It is hinted that it will be proposed to obtain a report from the Mint. He believed it unnecessary. Mr. Boudinot is in Philadelphia. We must send to him—he will report when he pleases, and after all we shall receive no information of any consequence.

FEBRUARY, 1802.

The Mint.

H. OF R.

There is a difference between this and other countries. Other nations need to coin their own money; it is not with them the general, but the partial good; it is aggrandizement of individuals, the trappings of royalty. Here it is true you established a Mint; you have raised armies and fleets, &c. to create an Executive influence; but what do the people say now? They send men here now to govern, who shall not govern for themselves, but for the people.

Mr. DANA.—When we shall be deprived of the right of debating, it will be full time for gentlemen to criminate, but not now. The gentleman from Virginia, as usual, talks more or less to the purpose on every subject on which he undertakes to speak; like the sun on a cloud he may illuminate in some measure, but neither give nor leave any lasting substance or weight. Mr. D. was in favor of the resolutions going to a select committee.

Mr. MACON.—The Mint has been in operation ten years—see what has been done—its inutility is evident. Money goes constantly from here to the East Indies; will not the American dollars go? Shall we be always coining? Mr. M. thought the Bank of the United States might be authorized to coin.

Mr. S. SMITH was of the same opinion.

Mr. RUTLEDGE, also; and he wished inquiry might be made of the bank whether it could be done, and on what terms, before he undertook to abolish.

Mr. R. dilated on the necessity of continuing the copper coinage, at least; and he wished the resolution to go to a select committee, who should thoroughly understand the subject, and show what could best be done; he was not for thus rapidly hastening in the work of indiscriminate demolition.

Mr. GRISWOLD.—The gentleman from Virginia thinks he has all necessary information on the subject; far was Mr. G. from thinking he had; he would inform the gentleman from Virginia that the coinage of copper will pay its own expense, and more. Perhaps it will be best to abolish the coinage of gold and silver, and retain only the copper; he did not know; he wished it referred to a committee who should be able, on examination, to decide.

Mr. BAYARD.—He acknowledged there had been aberrations from the subject; but he believed those had been most guilty who had made the most complaint of others. We have been told that it is our object to delay. Why is this charge made? Has it any foundation in truth? If there be delay, the fault is not ours; and I call on them to show whence is the delay of which they complain, and from what cause it arises. If there be delay, those are the authors of it who have all power in their own hands—not the minority.

Gentlemen have said we have all necessary information on the subject. I have not—others have not. We know not on what terms it might be possible to agree with the bank, should it be thought advisable to discontinue the establishment ourselves; should it be thought best to con-

tinue the establishment, we know not how much lower might be the salaries of the officers concerned; from the vaunting declarations of some gentlemen, that we are become so much more enlightened, so much more patriotic than formerly, so ready to hug the doctrine of virtue's being its own reward, he was induced to think there might be found men who would conduct the establishment, without salaries, without any other fee or reward than the sweet gratification of having served the people. Any communication from the Director of the Mint can be easily and readily procured, if necessary.

Gentlemen have informed us that the coinage of every cent costs fifty cents. Is it this kind of information that gentlemen have, and on which they rely? The fact is not so. The establishment has been expensive from the coinage of gold and silver, not from that of copper, which more than pays itself.

Gentlemen talk of royalty, and very awkwardly charge the late administrations of attachment to monarchical measures; if they prefer the subject to any other irrelevant matter, he had no objection, but he did not wish to have attributed to himself sentiments he had never suggested. He had said that the coining of our own was a mark of our sovereignty, not of our royalty, as insinuated. He did not consider that royalty and sovereignty was the same thing; the people originally, or their power given to their delegated government, constituted the sovereignty. Why do gentlemen endeavor to catch the popular ear by their empty vociferations, charging the late administrations, and the present minority in Congress, with a fondness for royalty? Why forever sounding this imaginary attachment in our ears? The time will come—it must come—when the people will be undeceived; when they will judge of men, of their Government, not by their vain professions, but by their actions.

The gentleman (Mr. RANDOLPH) endeavors to have it believed that I am attached to English laws; so, indeed, I am to many of the sacred principles of those laws—the trial by jury, the habeas corpus, &c.—principles avowed in the Bill of Rights of our constitutions, principles brought with us from England, in which we have been educated, and which I hope will ever continue to distinguish, to govern us; principles that could never impel me to tear down or root up, with the rage of revolutionary spirit, all that is useful or valuable, without hesitation, without distinction; yet that gentleman never heard me express a fondness for English laws, in the sense in which he wishes it to be understood.

The gentleman talks of my taking just now the poor under my protection. The time did exist when the poor did not need that protection, when nothing was done to injure them; it is now altered; now the rich are to be freed from taxes, &c., and the poor to be oppressed; never was there a time when, more than now, they needed protection.

On dividing, there appeared in favor of the Committee's rising 33—against it 54.

H. OF R.

The Mint.

FEBRUARY, 1802.

Mr. RUTLEDGE then moved that the resolution be referred to a select committee; he hoped his motion would prevail, if it should not, he should not regret having made it; that when this mania for ruin should be over, and the time should come for cool reflection, it might appear that attempts were made for stopping it.

Mr. GILES.—Gentlemen talk of warmth; he had not seen it; it is, however, natural for them to be warm; they were in the minority; but he did not wish the imputation of warmth thrown on himself.

Mr. BAYARD.—I acknowledge the gentleman has been cool, but he has said warm things; he has accused the last Government of an attachment to monarchy; he has talked much of royalty, Executive influence, &c. He may feel very cool himself when making these unfounded suggestions, but they are not calculated, nor do they appear intended to make others so.

Mr. DANA.—The gentleman says he is cool; I have observed he is usually so when employed, as he often is, in eulogizing himself and friends; he talks with all the coolness of self-complacency.

Mr. DENNIS.—Gentlemen have acknowledged the probability that the coining of copper, at least, may be profitable; why not, then, consent to refer to a select committee, who can make all necessary arrangements? It were curious, indeed, that a resolution to repeal should go to a committee to alter and revise. He had no predilection for the Mint Establishment; he believed, as it was now managed, it was expensive, and he doubted the propriety of continuing it without alterations; those alterations ought not to go to the coining of copper; for that would certainly be useful.

A motion was then made and seconded that the said resolution be referred to a select committee, to consider and report thereupon to the House.

On which motion the question being taken that the House do agree thereto, it passed in the negative—yeas 33, nays 54, as follows:

YEAS—James A. Bayard, Thos. Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew, Clay, John Condit, Thos. T. Davis, John Dawson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, Samuel L. Mitchell, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith,

Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Taliaferro, jun., David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

And then the main question being put, that the House do agree to the said resolution, as reported from the Committee of the Whole House, it was resolved in the affirmative.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. GILES, Mr. MITCHELL, and Mr. HOLLAND, do prepare and bring in the same.

TUESDAY, February 9.

The House proceeded to the farther consideration of an engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," which was read the third time on the eighth instant: Whereupon,

Resolved, That the said bill do pass, and that the title be, "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage.'"

Mr. SPRIGG, from the committee to whom was referred, on the nineteenth ultimo, the petition of sundry inhabitants of the City of Washington, in the District of Columbia, made a report; which was read and considered: Whereupon,

Resolved, That it is expedient to pass a law incorporating a company for the purpose of opening a navigable canal, to connect the waters of the Potomac river with those of the Eastern Branch thereof, through Tiber creek, and the low lands at the foot of the Capitol Hill.

Ordered, That a bill or bills be brought in pursuant to the said resolution; and that Mr. SPRIGG, Mr. BRENT, and Mr. FOSTER, do prepare and bring in the same.

Mr. DAVENPORT, from the Committee of Revision and Unfinished Business, presented a bill to continue in force "An act to augment the salaries of certain officers therein mentioned," which was read twice and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, the Secretary of War, and Comptroller of the Treasury, to the Commissioners appointed in pursuance of the act, entitled "An act, for the relief of the refugees from the British provinces of Canada and Nova Scotia," enclosing certain documents relative to the claims of Elijah Ayer, deceased, and Elijah Ayer, junior, refugees from Nova Scotia; which was read, and ordered to be referred to the Committee of the whole House to whom was committed, on the twenty-fifth ultimo, the report of the Committee of Claims on the petition of Caleb Eddy.

Ordered, That the Committee of the whole House to whom was committed, on the eighth instant, the report of the committee appointed on the thirty-first of December last, on so much of the

FEBRUARY, 1802.

Internal Revenues—Courts of Maryland.

H. OF R.

Message of the President of the United States as relates to "naval preparations, and the establishment of sites for naval purposes," be discharged from the consideration thereof; and that the said report be recommitted to Mr. MITCHILL, Mr. RUTLEDGE, Mr. EUSTIS, Mr. NEWTON, and Mr. JOHNSON.

The House resolved itself into a Committee of the whole House on the bill making certain partial appropriations for the year one thousand eight hundred and two; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the whole House on the bill for the relief of Samuel Harvey Howard, and other officers of the courts of Maryland; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

WEDNESDAY, February 10.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred the memorials and petitions of sundry manufacturers of gunpowder, of hats, of types, of brushes, and of stone ware, within the United States, made a report; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Claims, of the twenty-seventh ultimo, to whom were referred the petition of John Carr, and two reports of committees thereon; and, after some time spent therein, the Committee rose and reported their disagreement to the same.

Ordered, That the said report of the Committee of the whole House do lie on the table.

An engrossed bill making certain partial appropriations for the year one thousand eight hundred and two, was read the third time, and passed.

INTERNAL REVENUES.

Mr. DAVIS moved the following resolution:

Resolved, That the several laws imposing duties on stills, and on domestic distilled spirits, refined sugar, licenses to retailers, sales at auction, pleasurable carriages, and on stamped vellum, parchment, and paper, ought to be repealed; and that the Committee of Ways and Means be, and they are hereby, instructed to report a bill conformably to this resolution."

Mr. DAVIS assigned as reasons for this motion, that the business, though long submitted to the Committee of Ways and Means, had not yet been reported upon, and the necessity of coming to an immediate decision.

Those opposed to the motion stated that it had

been determined in that committee to repeal the internal revenues; that certain details in the repealing bill were not yet settled, but soon would be; and that of consequence no time would be gained by its adoption.

On the question, whether the House would take the above motion into consideration, it passed in the negative—yeas 40, nays 57, as follows:

YEAS—Willis Alston, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John Dawson, John Dennis, William Dickson, John Fowler, Edwin Gray, William Barry Grove, John A. Hanna, Joseph Heister, Joseph Hemphill, Archibald Henderson, William Hoge, George Jackson, Michael Leib, Thomas Moore, Thomas Morris, James Mott, Thomas Plater, John Rutledge, John Stanley, John Stratton, John Taliaferro, jun., Philip R. Thompson, Abram Trigg, George B. Upham, Isaac Van Horne, Benjamin Walker, Robert Williams, and Henry Woods.

NAYS—John Archer, John Bacon, Theodorus Bailey, Thomas Claiborne, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, Seth Hastings, Daniel Heister, William Helms, William H. Hill, James Holland, David Holmes, Benjamin Huger, Charles Johnson, William Jones, Thomas Lowndes, Ebenezer Mattoon, John Milledge, Samuel L. Mitchell, Lewis R. Morris, Thomas Newton, jun., Joseph H. Nicholson, Joseph Pierce, John Randolph, jun., Nathan Read, William Shepard, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Kilian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Ordered, That the said motion do lie on the table.

COURTS OF MARYLAND.

An engrossed bill for the relief of Samuel Harvey Howard, and other officers of the courts of Maryland, was read the third time; and, on the question that the same do pass, it passed in the affirmative—yeas 56, nays 36, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, John Dennis, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, John Fowler, William B. Giles, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, Joseph Hemphill, David Holmes, George Jackson, William Jones, John Milledge, Samuel L. Mitchell, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stratton, John Taliaferro, jun., Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, and Henry Woods.

H. OF R.

John Carr.

FEBRUARY, 1802.

NAYS—Thomas Boude, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Dickson, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, William Hoge, Benjamin Huger, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Thomas Morris, James Mott, Joseph Pierce, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Robert Williams.

Resolved, That the title be "An act to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing in the Territory of Columbia, by the Marshal of the said District."

THURSDAY, February 11.

The Speaker laid before the House a letter from RICHARD SPRIGG, one of the members for the State of Maryland, containing his resignation of a seat in this House; which was read, and ordered to lie on the table.

On motion, it was

Ordered, That Mr. J. TALIAFERRO, Jr., be appointed of the committee "to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, and to report by bill, or otherwise," in the room of Mr. SPRIGG, who hath, this day, resigned his seat in the House.

Mr. DAVIS, from the committee appointed, presented a bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;" which was read twice, and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement of goods, wares, and merchandises, exported from the United States, from the first of October, one thousand eight hundred, to the thirtieth of September, one thousand eight hundred and one, inclusive; which was read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to authorize the settlement of the account of Samuel Dexter, for his expenses in defending against the suit of Joseph Hodgson," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments of the Senate; Whereupon,

Ordered, That the said amendments, together with the bill, be committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole House on the bill to amend an act, entitled "An act to lay and collect a direct tax within the United States;" and, after some time spent

therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Ordered, That the memorial of Charles Pettit, of the city of Philadelphia, presented on the thirty-first of December, one thousand seven hundred and ninety-nine, and the documents accompanying the same, be referred to the Secretary of the Treasury, with instruction to examine the same, and report his opinion thereupon to the House.

JOHN CARR.

The House proceeded to consider the report of the Committee of Claims, of the twenty-seventh ultimo, on the petition of John Carr, to which the Committee of the whole House reported their disagreement on the 10th instant; and, the said report being twice read at the Clerk's table, in the words following, to wit:

"That they have duly considered the same, and have agreed to the report made by the Committee of Claims, at a former session of Congress, and which is herewith reported.

'The Committee of Claims, to whom was referred the petition of John Carr, with the report of a select committee thereon, having examined and considered the same, report:

'That the petitioner seeks to obtain the pay and emoluments of a lieutenant, as if he had continued in the service of the United States till the end of the war.

'A particular statement of this gentleman's case is contained in a letter from the Accountant for the Department of War, which is subjoined, and to which the committee ask leave to refer, and pray that the same may be received as a part of this report.

'They are of opinion it would not now be expedient to re-settle accounts which have been, so long since, adjusted in the proper Departments, and by persons duly authorized; and, therefore, that the prayer of the petition ought not to be granted."

The question was taken that the House do concur with the Committee of the whole House in their disagreement to the same, and passed in the negative—yeas 32, nays 58, as follows:

YEAS—Willis Alston, John Archer, Thomas Boude, Samuel J. Cabell, John Campbell, Matthew Clay, John Dawson, John Fowler, William B. Giles, Daniel Heister, William Hoge, James Holland, William Jones, Michael Leib, Thomas Lowndes, John Milledge, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Smilie, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, and Benjamin Walker.

NAYS—John Bacon, Phaniel Bishop, Robert Brown, William Butler, Thomas Claiborne, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, William H. Hill, David Holmes, Benjamin

FEBRUARY, 1802.

State Balances.

H. OF R.

Huger, George Jackson, Charles Johnson, Ebenezer Mattoon, Samuel L. Mitchell, Thomas Moore, Lewis R. Morris, Thomas Morris, James Mott, Joseph Pierce, John Randolph, jr., Nathan Read, John Rutledge, William Shepard, Israel Smith, John Cotton Smith, John Smith, of New York, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, George B. Upham, John P. Van Ness, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

And then the main question being put that the House do agree to the said report of the Committee of Claims, it was resolved in the affirmative, and so the said petition was rejected.

FRIDAY, February 12.

An engrossed bill to amend an act, entitled "An act to lay and collect a direct tax within the United States," was read the third time, and passed.

A petition of William Henry Harrison, John Gibson and others, trustees for establishing and founding an academy, called "The Jefferson Academy," at Vincennes, in the Indiana Territory, was presented to the House and read, praying that a donation of lands, to which the Indian title has been, or may be, extinguished, may be granted to the trustees of the said academy for the accommodation and benefit thereof, under the regulations therein specified.

Ordered, That the said petition be referred to Mr. RANDOLPH, Mr. CUTLER, and Mr. CONDIT; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On motion, it was

Resolved, That the Speaker address a letter to the Executive of the State of Maryland, informing him of the resignation of RICHARD SPRIGG, one of the members of this House, of his seat in this House, in order that measures may be taken to supply the vacancy occasioned thereby.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to extend the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation," with several amendments; to which they desire the concurrence of this House. The Senate have, also, passed the bill, entitled "An act for the relief of Lyon Lehman," with an amendment; to which they desire the concurrence of this House.

Ordered, That Mr. D. HEISTER be appointed to the committee to whom was referred, on the fifth instant, a motion, in the form of two resolutions of the House, "respecting the adjustment of the existing disputes between the Commissioners of the City of Washington and other persons who may conceive themselves injured by the several alterations made in the plan of the said city; also, relative to a plan of the said City of Washington, conformably, as nearly as may be, to the original design thereof, with certain exceptions," in the room of Mr. SPRIGG, who resigned his seat in the House on the eleventh instant.

Mr. NICHOLSON, from the committee to whom

had been referred the Message of the President of the 11th ultimo, and a resolution of the 5th instant, made a report which concluded with resolutions to the following effect:

"That, from the 1st of March next, the offices of two of the Commissioners of the City of Washington ought to be abolished, and all the duties of the commission be thereafter vested in one commissioner.

"That the accounts of the commission be settled with the accounting officer of the Treasury before the 1st of March.

"That such portion of city lots pledged for the repayment of loans made of Maryland, be annually sold, so as to meet accruing instalments, unless, in the opinion of the President, too great a sacrifice would thereby be made; in which case he is authorized to advance the sum needed from the public Treasury."

Referred to a Committee of the Whole on Monday next.

The House took up the report of a select committee on the petition of McCashen and others, which involves the controversy respecting lands granted to John Cleves Symmes.

Mr. DAVIS made a brief statement of the facts attending the business; when, on motion of Mr. NICHOLSON, the report of the select committee was referred to a Committee of the Whole on Monday week, in order to give time to the members to examine documents, and in other respects to make themselves acquainted with the case.

STATE BALANCES.

Mr. THOMAS called up his motion respecting State Balances, which is as follows:

Resolved, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances, which, by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States, and that the said committee have leave to report by bill or otherwise."

Mr. TILLINGHAST moved to insert in the 7th line, after the words "United States," the words "and certain balances reported to be due from the United States to the individual States."

Mr. GRISWOLD observed that there were no such balances in existence—they had all been extinguished by being paid.

The amendment was lost without a division.

Mr. BAYARD hoped the resolution would prevail. The debtor States, not satisfied with the settlement made by the Board of Commissioners, had asked for information respecting the grounds on which it had been made. The information had been imperiously refused. In his opinion it was but right, if the debtor States did not dispute the validity of the debts due to the creditor States, that they should agree to expunge the claims against the debtor States. Indeed, he had been assured that the commission was not instituted with a view of sustaining any charges against the debtor States, but for ascertaining the amount due to the creditor States, and funding them; and he believed it had been so understood at the time. This was an affair not determinable by the ordi-

nary rules applied to individual cases. Many of the States, not expecting a settlement, had kept no accounts or vouchers; and however great the supplies they contributed under such circumstances, they received no credits for them; while those States which had been most careful in the preservation of vouchers, shared a different and a better fate.

Mr. B. believed it was the true policy of the creditor States to agree to the extinguishment of these balances. He believed they never could be paid, because no State allowed them to be due. They would not, therefore, be paid voluntarily; and he knew of no force in the United States to compel payment. Why, then, keep up a source of irritation, which could do no possible good, and which could only tend to repel some States from that Constitution, which we all ought to endeavor to make the object of general affection?

Mr. SOUTHWARD said, he had yet heard no reason that convinced him that the resolution offered was just or proper. It would be recollected that this contract was made under the Confederation. In the establishment of our independence, great and various exertions had been made. In the contributions made, great inequalities took place, which were unavoidable. Generally, where the war existed, the States became creditor States. It was just that those States which had contributed more than their share should be repaid, and that those who had paid less should make up the deficiency. If the debtor States were not to pay their balances, why settle the accounts? To relinquish the payment would be, in his opinion, not only unjust but unconstitutional. The Constitution says, "All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution as under the Confederation;" and the present Government had recognised those debts as just. The gentleman from Delaware says, the settlement is not just. But this was barely the suggestion of his own mind. To sustain it, he ought to have shown its defects; but this he had not done.

Mr. NICHOLSON said, the Constitution declares that engagements under the new Constitution shall be as valid as under the Confederation; that all the debts of the one should be paid by the other; but not, as the gentleman from New Jersey seemed to imply, that the United States should not release their debtors. We do not say, if we extinguish those balances, that we will destroy our moral obligation to pay what we owe, but that we will release those who are said to be indebted to us. Mr. N. believed the balances ought to be extinguished. To have enforced their payment when they were first declared to be due, might have hazarded the integrity of the Union; and he was persuaded that it would not be politic in the United States at any time hereafter to call for them. But the present motion goes no further than to appoint a committee to inquire into the expediency of extinguishing them, and he presumed that there would be no objection to making the inquiry.

Mr. MITCHELL was in favor of the resolution, as

he believed a refusal to adopt it would be attended with unpleasant sensations. He judged so from an historical review of the business. The several States had associated together for their common defence, and, in the eye of equity, whatever that defence required, should constitute a common charge. The accounts of expenses thus incurred were not settled till the new Government was established. That Government fixed the mode of settlement; it appointed a board of referees, to report the debts and credits of the respective States. In this report, it was the fortune of certain States, notwithstanding the greatness of their contributions, to be reported debtor States. These States became debtors from the independent spirit with which they asserted their sovereign rights. Not relying on the general contributions, they furnished great supplies without making any charge to the Union; by exerting all their strength, they paid as they went, and preserved no vouchers of what they paid. This, he averred, was the case as to the State which he had the honor in part to represent; a State as willing as able to contribute, and which did contribute to a great extent; but which had neglected to preserve her vouchers, the preservation of which would have made her a creditor State. He believed, therefore, that in equity, the States were not bound to pay these balances. But to this it is replied, the award is final. He would not agree to that; he denied it. Besides, there was a want of coercive power in the United States to enforce those demands. From this consideration alone, we ought to proceed with lenity, and endeavor to make the settlement a peaceable one. As in other circumstances, we ought to make a virtue of necessity.

Mr. MITCHELL said, he had been told by a former Secretary of the Treasury, that this settlement was only intended as a record for the books of the Treasury, and never intended to be carried into execution as to the debtor States.

Mr. ELMER had no objection to the business going to a committee. But he would observe that it was considered at the time the board was formed, that, on a settlement, the debtor States should pay, and the creditor States be paid. On examining the journals of Congress, it would be found that payment had been actually pledged. It would be found, too, that the debtor States had gained greatly by the war. For instance, New York, which had such an extensive western territory, had gained more than New Jersey, which had none. Whatever may have been the secret understanding that the debtor States were not to pay, it was not so understood by the people of the United States.

It is said that there is no way of enforcing these balances; but that is no argument for striking them off altogether. Though they are now enforced, there may be future circumstances under which the States will be willing to pay them. New York had already done something, and he had no doubt other States would do something. Besides, no State in its sovereign capacity had applied for an extinguishment. There appeared, therefore, no propriety in proceeding to such a

FEBRUARY, 1802.

State Balances.

H. OF R.

measure at this time. If a regard to harmony was pleaded, that was a strong argument. But, as yet, we had heard no murmur from the States.

Mr. S. SMITH said, he did not rise to take any part in the debate, but in order to bring the subject directly before the Committee. To do which, he moved so to amend the resolution as to make it read, "Resolved, That it is expedient to extinguish the claims," &c.

Mr. LOWNDES hoped the amendment would not be agreed to. He did not see the expediency of volunteering a relinquishment of the claims established against several of the States. The amendment was calculated to take the Committee by surprise. The original resolution went merely to consider the expediency of a relinquishment; the amendment involved the principle itself.

Gentlemen had gone into the merits of the main question. It was true, that all the States had been engaged in one common cause, and it was true the contribution should have been general. But it was known, that the old Government had not the power of obtaining money from the States in proportion to their capacity; its only mode was to recommend. It was known that some complied with the recommendation, and some did not. The great business, however, was effected. After which, to settle the accounts, a board was established, in which he believed each State was represented, which declared certain balances to be due. Objections are now urged because the proceedings of this board were not re-examined. But he would ask whether the debtor States would be satisfied with any result that brought them in debt? It was well known, that in private transactions, it was usual to submit the settlement of a controversy to a board of arbitrators, whose award was final.

Mr. L. supposed that this plan had been the result of accommodation. In consequence of it, certain States had been found debtor, which he presumed had not made proportionate advances. Surely, therefore, it was right they should pay. For these reasons he hoped the Committee would not be surprised into an adoption of the amendment. He had, however, no objection to refer the business generally to a select committee.

Mr. SMITH said, he had seconded the motion to amend, not because he was in favor of the motion as amended; for, on this subject, he thought with the gentleman from South Carolina. But he thought the principle ought to be settled in Committee of the Whole, and not in a select committee. That principle, he thought, was as well understood now as it ever could be. It lay within very narrow bounds. Will you forgive your just debts on the ground of generosity?

Mr. RUTLEDGE did not think the gentleman from Maryland had played the General to-day, though he often did so in that House. He had made a motion, as if he wished the debtor States discharged from their balances, and the gentleman from Pennsylvania had seconded the motion for the very opposite reason. He had believed that the sensibility of the debtor States would have induced the House to indulge them with a

reference, which would produce a complete development of the business. He was willing to have got this information very fully; to this he had no objection, but he certainly felt strong objections to the amendment.

We are told, said Mr. R., that the tranquillity of the debtor States is disturbed by hanging up these debts in your statute books. But where was the evidence of this? The settlement had been made many years since, and no State had expressed any alarm at the prospect of the balances being paid. If any State had felt an alarm, why had not the members in this House been requested, and those in the other branch been instructed to pursue measures for getting rid of them. The gentlemen from Delaware and New York talk about the sensibility of the debtor States, and yet they tell you the States know they cannot be compelled to pay. He did not understand this kind of logic.

Mr. R. could not at present vote for a discharge of these balances. Circumstances may hereafter arise, which may induce the States to pay them. Formerly it had been said by a gentleman from New York, that that State would not pay a cent; and yet she had paid a million, which would otherwise have been paid out of the Treasury of the United States.

[Some gentlemen contested the sum paid by New York.]

Mr. RUTLEDGE resumed.—If not a million, yet certainly great payments had been made, and the States may find themselves, in peace or in war, in such a state, as to be benefited by paying these debts. They may be greatly benefited in discharging them by making roads, opening rivers, digging canals, and raising bridges. These improvements would be highly interesting to several of the States, and to New York in particular; and he believed the time would come when they would be willing to discharge the debts in this way, to enhance the value of their lands. These were his impressions. To the reference he had no objection. But he was not prepared in the present state of things, without any application from the States, to vote for releasing them.

Mr. HILL was desirous the amendment should not be made, not from any indisposition himself to agree to it, but from a regard to the sentiments of other gentlemen. Even if it was ascertained that these debts had arisen on a just consideration, yet, in his opinion, they ought to be extinguished, from the principle that, in our Government, whatever hazarded the harmony of the Union, ought to be avoided. Precedents were not wanting in which sacrifices were made to this principle. He alluded to the quieting the claims under Connecticut rights. But, whatever might be the general ideas on this subject elsewhere, he knew not a man in North Carolina, who did not believe the adjustment iniquitous. To show the Committee how the citizens of that State felt, he would state a case that had occurred before the Board of Commissioners. Two claims had been made, both for the same amount and the same description of supplies, one on one side and one on

the other side, of Pedee river; one in North, and the other in South Carolina; and, in one case, seven shillings had been allowed, and in the other, only sixpence for the bushel of wheat. The business generally was entitled to the attention of Congress. It had, in fact, already been attended to at different times. New York had extinguished eight hundred thousand dollars of her balance under certain provisions applied to her case.

Gentlemen talk of the moral obligation to discharge these balances; but they go on the principle that these debts are established. This we deny. We say that in all contracts there are two parties, and that the United States saying it is a debt, does not make it so.

The gentleman from South Carolina enforces the propriety of all the States contributing for the general defence. We say we have contributed our full share. This subject had been before the last Congress. A report was made, but, owing to press of business, it was postponed. Mr. H. saw no reason for shutting the door of inquiry, and therefore, though he felt no hesitation to vote for the resolution as proposed to be amended, yet to indulge other gentlemen, he was in favor of a reference to a select committee.

Mr. DENNIS was against the amendment, as he wished the subject to go to a select committee, with a view of obtaining a detailed statement of all the information connected with it.

Mr. HOLLAND stated that the reason of North Carolina being a debtor State was, that she had preserved no vouchers of the operations of her militia. He was indifferent whether the subject was taken up directly or referred; but he was convinced it ought to be examined and elucidated. The public mind ought to be settled. Why hold it up in the present state? Is it that the General Government may gain a greater ascendancy over the States?

Mr. BACON said, if the object of the motion was to go into a new liquidation of the old accounts between the United States and the several States, it would not only take up every day of the present session, but the work would be left unfinished for our successors. These debts had been incurred in a common cause, in which each State was equally interested, and towards which each State was bound equally to contribute. When Congress made requisitions on this principle, they were accompanied by a promise that there should be a final liquidation. This liquidation was made; the settlement was complete. But this settlement is now objected to, and what is to be done? Why we must annul the contract. This might satisfy some of the States, but he was sure it would dissatisfy others. He saw, therefore, no end to be answered by the motion. We must either set aside all that had been done, and begin *de novo*, to which this body is incompetent, or rest satisfied with what is already done.

Mr. R. WILLIAMS observed, that since he had held a seat in the House, this subject had been almost every session called up. The more he had heard it discussed, the more he became convinced of the necessity of getting it out of the way. He

found that whenever it was brought up, all was imagination. One State contended that it had contributed largely, and another, that its exertions had not been surpassed.

We are asked, why relinquish these balances before we are solicited by the States? He would reply that North Carolina never had recognised the debt, and, in his opinion, never would apply for its extinguishment. He was in favor of the amendment, because the principle ought to be decided here, and not in a select committee. What, indeed, could such committee report? There were no vouchers or books whereon the settlement had been made to be got at. All they could do, then, would be to report the balances alleged to be due, which any member could at any time learn.

It seemed almost useless to go into arguments to show the injustice of the claim, and of consequence, the justice of the resolution. It had been justly said, that those States which had contributed the most, had, by the report of the Commissioners, the most to pay; and this was peculiarly so with the State of North Carolina.

There were other considerations independent of those of justice, which recommended this measure. Had any way been pointed out in which these claims could be enforced? But, say gentlemen, some fortuitous events may happen that may induce the States to discharge these balances by building bridges, &c. But, inasmuch as these claims cannot be enforced, inasmuch as they rest upon no moral obligation; to continue to hold them up was to keep alive a perpetual source of irritation, not in the States, which felt too much indifference to be solicitous, but in this House—a source of irritation that involved a great waste of time and money.

Mr. W. had forborne to dwell on the injustice of these demands. But were he to enter on that branch of the discussion, he should say that the very act of destroying all the vouchers was of itself sufficient to justify any suspicion. He should say, that for what, in some States, there had been an allowance of one hundred pounds, North Carolina had not been allowed twenty shillings. Could, then, gentlemen talk of moral obligation, and say that this was a just debt?

Mr. T. MORRIS said, it was contended that the accounts should be opened anew and re-examined. The fears, therefore, of the gentleman from Massachusetts, were entirely visionary. The resolution was a simple one. It proposes to inquire into the expediency of doing away these debts. The amendment goes to determine the principle here. He thought it proper the principle should be settled here. But gentlemen say they want information. If so, after the amendment is agreed to, they may move for a postponement. If the amendment were carried, he would himself move a postponement.

It had been said that New York had had eight hundred thousand dollars of her debt remitted by the United States. But how did the case really stand? New York had availed herself of the act of Congress, not because she acknowledged the debt to be just, but because she preferred doing

FEBRUARY, 1802.

State Balances.

H. OF R.

something to remaining in the situation towards the United States in which she stood. It was strange, then, to hear gentlemen say that New York had been favored. What was the fact? North Carolina, according to the gentleman, had not, and would not, pay one cent; and New York had discharged a greater sum than was due by all the other debtor States, with the exception of Delaware. She was, therefore, instead of being favored, placed in a worse situation than any other State. It was from the existence of this state of things that he wished a final decision to be made this session. New York having agreed to make certain payments to the United States, it was important to her to know whether the United States meant to enforce payment by the other States. Her situation would be truly unfortunate, if, after agreeing to pay, the United States suffered her claims against the other States to sleep. She would not only have to pay her quota of the debts, but would see no prospect of deriving her share of benefit from the payments of the other debtor States.

Mr. MACON said the subject was a very old one, which had occupied much time every session for many years, and he thought it would be as well to try the question now as at any other time. No information of a select committee could throw any new light upon it.

There was a fact which ought to have great weight with the Committee. One of the Commissioners who made the settlement, who was a member of this House, had, after the settlement, proposed a resolution to extinguish the balances of the debtor States; and he had stated, as a reason for this measure, that the principle adopted by the board had operated very harshly upon particular States. Mr. M. had it from authority not to be questioned, that in the settlement by the Commissioners, teams, with the usual number of horses, had not produced twenty shillings.

This subject had hung over our heads for eight years, and no scheme was yet devised for collecting the balances. How could they be collected? Congress had, it is true, authorized expenditures by the States in the erection of fortifications; but this very act was a tacit confession of the impracticability of getting the money into the public Treasury. As to a settlement with North Carolina, it was involved in great difficulty. In the act of cession of lands by that State to the United States, it was provided that the territory ceded should be pledged to pay a proportional share of the balance due the United States. How could that share be estimated?

Mr. M. regretted that this subject had been brought up. He should not himself have been for bringing it up, for he thought the claims of the United States not worth a rush. The truth was, the States had all exerted themselves in one great and common cause; they had done their best; they had acted with great glory. As to the State which he represented, he would ask if the first blood that had been spilled after that shed at Boston was not in North Carolina? and that was the blood of brother against brother. He desired not,

however, to make comparisons, which were always unpleasant, but to show that North Carolina had no reason to shrink from an inquiry which would demonstrate that she had fully contributed her share in the common cause, without meaning to assert that she had done more than other States. Let, then, Congress decide at once, and abandon the claims altogether, or devise some plan for collecting them, that we may know how we stand.

Mr. S. SMITH said, that when he proposed the amendment before the Committee, he had assigned his reasons for it. He had observed that the debate went to the merits of the main question, and was apprehensive that, after spending the day in discussing it, we should at last take a vote, not on it, but on an incidental point. His object, therefore, was to bring the specific proposition before the Committee. I had, also, another motive. I wanted to spare the time of the Committee. This was my object. But the gentleman from South Carolina attributes to me a different motive. He considers me as interested so far as relates to Maryland. But that gentleman, it will be recollected, constantly checks other gentlemen in ascribing any motives to him, though it is scarcely possible, in the freedom of debate, to avoid occasionally noticing the motives of gentlemen. He should, therefore, on this point, be extremely cautious, while he will not suffer others to attribute motives to him, to refrain from attributing motives to them. The truth, however, was, that Maryland, though nominally a debtor State, was really a creditor State, and therefore whatever interest he felt from his relation to that State, would produce an effect the opposite of that ascribed to him.

The gentleman from South Carolina is also pleased to call me a General; he adds, however, that I have not on this, as on other occasions, played the General. I will tell that gentleman in reply, that, in Congress, I never think of playing the General. My object is always to go directly to the point, and though I am always disposed to give the gentleman credit for every good thing he says, yet I cannot do so on this occasion, as I recollect to have found the very same thing in a newspaper a day or two ago.

This question is of no importance to Maryland, but it is very important to the United States to come to a decision upon it. He thought it proper that the United States should relinquish these balances. It was also important, so far as it respected New York, whom he thought much injured, because, willing to comply with the law of Congress, she had paid liberally, while other States had paid nothing. Why continue the debtor States? Will it pay a shilling into your Treasury? No, it will only sour their minds towards the Union. Were there any mode of enforcing the payment of this debt, I should be for it, but there is no chance of it. I believe that every State in the Union exerted itself in our common cause. I believe that no State exerted itself more than another. We all fought together like brothers. Where there was danger we appeared, and wherever the enemy was we met him. There was not a field of battle in South Carolina where

H. OF R.

State Balances.

FEBRUARY, 1802.

there were not to be found the blood and bones of Marylanders and citizens of other States.

Mr. RUTLEDGE said he was called up by the observations of the gentleman from North Carolina, who asks, with some force, and seems to place reliance upon the question, if gentlemen will not consent to review this settlement? He would answer, no. We cannot do it. The thing is impossible; the vouchers are destroyed; the materials for a new settlement do not exist: and they were properly destroyed. The settlement once made, they were useless.

The gentleman from Maryland, alluding to what I said respecting his being a General, says he cannot give me credit for my remark, as he had before seen it in a newspaper. Now, sir, I declare I never saw it in any newspaper; and I will assure that gentleman, I feel very sorry for it, as I think every article that relates to that gentleman well worthy my attention. Nay, I will seek for the newspaper, that I may see it. I do not, when I have anything to say, appear in the press, but I address myself to this House.

Mr. DANA said, I hope the amendment will not be agreed to. However gentlemen may be possessed of a wholesale intellect, that enables them to decide on interesting questions without a moment's reflection, I confess I am not blessed with so happy an intuition. I do not know that I have ever been called upon to form an opinion on this subject. As to a reference of it to a committee, I think their investigation may be useful, and after we get that, we may take time to decide. But now the plan is changed, and we are called upon to decide at once the principle. This mode of transacting business may be called an economy of time. You may give it the name, but it is not the substance. For my part, I desire to proceed according to our old plan, and go through the slow process of investigation. This is my way, and gentlemen may rest assured that this mode of hurrying business is not the way to save time, but to lose it.

Mr. BAYARD declared himself in favor of the amendment, and he could not think, notwithstanding the remarks of his honorable friend from Connecticut, that any gentleman in the House was unprepared to vote upon it. The subject had been frequently discussed, and he believed that the House was then as well prepared for a decision as they would be for a century to come. It involved but a single principle; and, as to information, he could scarcely tell what information was wanted. He felt much of the indifference of the gentleman from North Carolina, (Mr. MACON.) He was sure the United States had neither the right, or the power to recover these balances; and he repeated it as his opinion, that it had not been the original intention that the debtor States should pay them. Will gentlemen recollect that the commission was instituted under the old Confederation. Had Congress, then, a right to do any thing to bind the sovereignties of the independent States? All they could do was to pass resolutions making requisitions, which the States might or might not comply with. They could appoint

commissioners to settle the accounts, but could they impose the debts upon the States? No, they could not. It, therefore, never could have been contemplated that they would establish those debts. The only effect that could have been contemplated, was, that the creditor States might rely that, on a settlement, Congress would assume their balances.

Mr. B. said, though he thought, and others who had taken a view of the subject, thought, that these balances never could or would be recovered, yet others did not hold the same opinion. He alluded to those who were not competent to the taking an enlarged and correct view of the question. The opinion entertained by this description of citizens, however unimportant it might be in other States, was particularly detrimental to the State of Delaware. He believed that the apprehension that the balance allotted to Delaware would have to be paid, materially affected the value of property in that State. Mr. B. went, at considerable length, into the general merits of the question.

Mr. GRISWOLD said he wished the subject referred to a select committee, that it might be fully developed. The ideas of the gentleman from Delaware were certainly new, and which themselves required inquiry, though he believed the gentleman had overlooked several of the acts of the present Government. It would be found that in 1789, and in 1790, the board had been recognised. The acts of those years gave all the sanction to the measure that was proper to be given by the new Government; and he had supposed that the settlement made was final and conclusive. He had been heretofore inclined not to discharge the States from the payment of these balances. Yet he felt much disposed to attend to the ideas of gentlemen. It appeared that the prospect of a recovery was nearly desperate. He still, however, wished the whole subject to be investigated by a select committee, whose report would enable the House to arrive at a proper decision.

On the question being put, the amendment was lost—yeas 41, nays 46.

When the original resolution for referring to a select committee the consideration of the expediency of extinguishing the balances was carried.

Ordered, That Mr. THOMAS, Mr. BAYARD, Mr. DANA, Mr. HILL, and Mr. BUTLER, be appointed a committee, pursuant to the said resolution.

And the House adjourned.

MONDAY, February 15.

A petition of sundry inhabitants of the county of Fairfield, in the Territory of the United States Northwest of the river Ohio, was presented to the House and read, praying that the purchasers of lands formerly the property of the United States, in the said Territory, may be exonerated from the payment of interest which may have, or shall in future accrue on the amount of the principal, until the different instalments shall, respectively, become due; that the laws of Congress respecting the purchase and title of the lands aforesaid may

FEBRUARY, 1802.

Judiciary System.

H. OF R.

be revised and amended; also, that two sections of land in each township, in the said county of Fairfield, may be granted as a donation for the purpose of encouraging seminaries of learning therein.

Ordered, That such parts of the said petition as relate to the payment of interest until the instalments of the principal shall, respectively, become due, and to a revision and amendment of the laws of Congress respecting the purchase and title of lands, in the said Territory, be referred to the Committee of Ways and Means.

Ordered, That the residue of the said petition do lie on the table.

A memorial of sundry merchants of the town of Alexandria, in the District of Columbia, whose names are thereunto subscribed, was presented to the House and read, praying relief in the case of depredations committed on the vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, by the privateers of the French Republic, during the late European war.—Referred to the committee appointed on the fifth instant, to whom was referred a memorial of sundry citizens of the United States and resident merchants of the city of Baltimore, and State of Maryland, to the same effect.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act extending the privilege of franking letters to the Delegate from the Mississippi Territory, and making provision for his compensation." Whereupon,

Resolved, That this House doth agree to the said amendments.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying his report on the memorial and petition of Adam Tunno, and James Cox, and of Thomas Tunno, and John Price, of Charleston, in South Carolina, merchants and citizens of the United States, referred to him by order of the House, on the third instant; which were read, and ordered to lie on the table.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of Lyon Lehman:" Whereupon,

Ordered, That the farther consideration of the said amendment be postponed until Monday, the first of March next.

Mr. WALKER, one of the members from the State of New York, presented to the House certain resolutions agreed to by the two branches of the Legislature of the said State, on the thirtieth ultimo, and the first instant, proposing amendments to the Constitution of the United States, respecting the choice of a President and Vice President; which were read, and ordered to lie on the table.

Mr. FEARING, from the committee appointed on the twenty-sixth ultimo, presented a bill authorizing the conveyance of certain public lands within the Northwest Territory; which was read twice and committed to a Committee of the whole House on Friday next.

JUDICIARY BILL.

Mr. DAVIS called for the order of the day on the Judiciary bill from the Senate.

Mr. BAYARD moved a postponement of this bill to the third Monday in March.

He said he made this motion, as it was not in the least important that the business should be taken up on the present day, whereas there were other objects which required an early attention. No object could so conveniently be postponed as this, as it was not to take effect till the first of July. It was, therefore, substantially the same thing whether the bill passed to-day or three weeks hence. Its passage now would not save a cent, or the sooner abolish the circuit courts.

On the other hand, great benefit might be derived from the postponement. It would afford time to discern the operation of the proposed measure on the public mind. On former occasions gentlemen had contended that the public impression should have its weight in this House; he hoped, therefore, on this occasion, they would not abandon their old principle.

For himself he had not been in the habit so frequently of applying to the public opinion as some gentlemen in the House, because few occasions had occurred so important as this. He did presume that those who consider this Government as the mere creature of the national will, will not object to the delay asked on purpose to collect that will. He knew that a great impression had been made on the public mind by the passage of this act in the other branch; he knew that the people in various quarters of the Union were preparing to tell us what they thought on the subject. Since this business had been before Congress it was impossible it could have been felt in all its importance, or contemplated in all its views in the remote portions of the Union. On this interesting point the public mind ought to be known; he wished it to be profoundly agitated; he wished to destroy all apathy where the vital principles of the Constitution were so deeply affected. For he believed if the Constitution were saved, it must be by the people.

Already a great deal of important business was before the House; business, and particularly that which respected the internal revenues, that claimed an early attention. We were told the people felt anxious for a repeal of those taxes; that they begin to think we are not sincere. It was therefore high time to take that subject up and decide it. He could mention many other interesting points that claimed an early attention.

Mr. RUTLEDGE said he had seconded the motion of postponement without intending to have troubled the House on it. But he was called up by the cry on the left for the question. Such a mode of procedure may comport with the system of gentlemen who are prepared on all occasions how to vote; but it was a course to him novel, and, he would say, to the nation extraordinary. He had hoped that on a question of such importance—on a subject infinitely more important than any ever before discussed within those walls—

H. OF R.

Judiciary System.

FEBRUARY, 1802.

gentlemen would have honored the supporters of this motion with their reasons against it. Gentlemen may make light of this business, but the time will come, and shortly too, when they will feel the subject to be of importance. The people are thinking, deeply thinking, on it. Before he took his seat in that House, he did not hear that such a measure was contemplated; he did not believe that even in this wild season of innovation, so bold a measure would be attempted; the people had no idea of it until taken up in the Senate; and what was the effect? The moment they saw their rights affected they came forward with memorials against it. The respectable bar of Philadelphia had memorialized against it. The Legislature of Pennsylvania were of a different opinion.

To collect the public opinion, we ask the indulgence of a short time; no reasons are urged against our request; but the question is called for, and we are to be put down by the vote of a majority, by a silent vote. He begged gentlemen to overlook us, and to look at the nation. On former occasions gentlemen talked much of the people. On this occasion, when we wish a development of the public mind, they say no; and the question is called for. Are gentlemen for acting as on a former occasion? Do they think the minority have no rights? We had been told from high authority, that a minority has rights, has equal rights. He begged to know the meaning of the declaration; he supposed it meant we should have the right of debating.

If gentlemen are determined to have a silent vote, we shall deem it our duty to express our sentiments fully. They cannot expect a vote to-day or to-morrow. The subject is too important to be dismissed on a hasty consideration. If, then, the subject is of such a nature as necessarily to consume time, will not other important measures be neglected? The gentleman who had made the motion for going into a Committee of the Whole, had himself complained of the tardiness of the Committee of Ways and Means. Will not the discussion of this question, of such vast moment, still longer prevent the House from getting at the business confided to that Committee? whereas, if that be taken up now, it may be despatched in a short time.

Mr. GILES said he felt every degree of respect for the gentlemen, and he was persuaded they must be sensible that as far as gentlemen on his side of the House had gone they had treated them in a manner particularly respectful. He was still under the same impression, which alone induced him to oppose the motion for a postponement. When this bill came from the Senate, some gentlemen were for taking it up at an early day. This was alleged to be unexpected; a comparison of opinions took place, and the time for consideration was fixed, and, as he supposed, satisfactorily; this was the tenth day since the bill came from the Senate. Some gentlemen then thought three days sufficient for consideration; but ten days were asked, and granted. He then thought, and he still thought, the indulgence granted sufficient. It was true he had not replied to the remarks of the gen-

tleman from Delaware, because he did not think a reply necessary, and that from a sentiment of respect to the whole House, whom he thought fully competent without any remark from him to decide whether they were then prepared to enter upon the discussion, after the subject had laid over for ten days. Yet we are told we are precipitating the business. He believed the indulgence granted was as great as was usual; and it will be found that the time now given is greater than that allowed the opponents of the bill when it passed. He referred to the Journals to prove that there was not then that forbearance that gentlemen now recommend.

Gentlemen seem to apprehend that this subject will be treated as one other has been, by a silent vote. Mr. G. hoped the House would proceed on it with calmness, dignity, and reflection. He viewed it as an all-important question, and from a respect to himself, to those associated with him, and to the nation, he would endeavor to present the most correct view he could take of it. And permit me to say, said Mr. G., that when subjects occur that require discussion in this House they will be discussed. But gentlemen go too far when they expect us to enter upon a discussion of propositions that require no examination. Such propositions had been made, when gentlemen requested information already in the possession of the House.

But gentlemen say this subject is recent; they had heard no mention of it before they took their seats in the House. Surely those gentlemen are not much in the habit of reading newspapers, or they would have seen that since March, 1800, it had occupied more of the public attention than any other subject. There was another circumstance that proved this step was not so unexpected as gentlemen say it is. Appointments had been made to the new offices under the system of individuals, who held places under the old, and who, from an expectation that this law would be repealed, had refused to accept them.

Gentlemen say they wish to agitate the public mind. I have no doubt they wish to agitate it. But I have no doubt, too, of their entire incompetency to raise alarm, because they are on the wrong side of the question. I have said that I wish to discuss this subject with calmness. This is still my wish. I wish to take it up free from all partiality or prejudice, and to examine it on its intrinsic merits. But it is not to be inferred from this that we fear the impression of the public sentiment on our side. I believe that sentiment is with us. A great majority of the Legislature of Pennsylvania has declared for a repeal of the law. North Carolina had instructed its Senators to the same effect before this discussion. Yet gentlemen say the subject had not been thought of, though two States had declared themselves in favor of the repeal, and Maryland had decided indirectly to the same effect. From these considerations, I should think it proper to delay the discussion no longer. I hope gentlemen will therefore agree to take up the subject, and enter upon an examination of it, not with a view to triumph, but to truth. If, after we have progressed, em-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

barrassment should occur, or information be wanted, we can have no objection to a postponement.

Mr. GRISWOLD.—We ask for a postponement of this question, and gentlemen answer us, the day for discussion is fixed—it is the order of the day for this day. If this answer is sufficient in this case it is sufficient in every other. Do we not make bills the order for a certain day, but do we scarcely ever take them up on that day? Why, then, deviate from our ordinary rules? Are there not strong reasons for a postponement? First, much other business requires to be despatched. It is not contemplated that this law shall go into operation till the first of July. While therefore this is not, others are pressing. Why, then, take up this, and postpone them? Besides, is not the subject of vast importance—of more importance than any which ever came before this House? Why, then, deny time? Will not the discussion deeply involve the feelings? Are there not many honorable gentlemen who think that, by passing this bill, the Constitution is prostrated forever? Can gentlemen, after that, go on calmly discussing other business? Are not gentlemen then willing to postpone this question for the purpose of passing upon other subjects that involve no Constitutional question? Then, if they please, they can bring forward this bill, which, it was feared, would be the last act of the session.

Mr. DAVIS.—No gentleman on this floor would pay more respect to public opinion than I would. But I know the difficulty we experience here in ascertaining that sentiment. When in Philadelphia, where it was certainly more easy to acquire it, we had received memorials from ten thousand citizens, and this was called public opinion; but when the elections came on we found it was incorrect. I know no better way of ascertaining the public opinion, than through gentlemen who represent the several districts of the country. For my part, I know the sentiments of the State I represent. I know it to be in favor of the repeal. But gentlemen beg for more time before we adopt so bold a measure. To my knowledge so much time was not allowed when this law was carried. They require time for consideration. I presume that they who have passed the law have already considered it. Are gentlemen ready to say they passed it without consideration? We are told this is a bold measure. Permit me to say the passing the bill, and the mode of passing it, was a still bolder measure. Attempts were made to amend. But no; not a word was suffered to be added, though the bill was allowed to be defective. The honorable gentleman from Delaware wishes us to wait for an expression of the public opinion, and yet he tells us he will vote at last from the dictates of his own mind; from which I must infer that be the public opinion what it may, he will not listen to it.

Mr. RUTLEDGE was sorry gentlemen referred to newspapers for what was to be done here. They ask whether I have not seen this measure proposed in the newspapers? Yes; I have seen it proposed there. But I did not suppose that the wild projects of newspapers for prostrating the

judiciary, for robbing the Senate of the treaty-making power, and other projects, were to be effected by us.

They say, too, as an evidence that this measure was expected, that district judges appointed under this law refused their new appointments through the fear of being driven from their seats by its repeal. But I will tell gentlemen that as to two of these judges, and I know of no other, the fact is not so. In the case of the judge of South Carolina, I know it is not so, from personal knowledge, and from good authority I know it not to be so in the case of the district judge of North Carolina. As to the instructions of North Carolina, I believe they were drawn from the attention of Congress being excited to the subject by the President.

Gentlemen say the law, now proposed to be repealed, was itself passed precipitately. But after it was proposed two sessions passed, at the end of one of which it was published for consideration, and taken home by the members, before it was finally enacted.

Mr. R. WILLIAMS said the resolutions of North Carolina passed on the 17th of December, and the communication of the President was made on the 6th of December. He was therefore warranted in saying the communication of the Executive had no effect on this measure.

If the business is so all important as gentlemen say, ought we not immediately to enter upon its discussion? But I never expected to hear such a warning in this House. Are we to be told that we are not only to dread the effects of the repeal of this law upon the nation, but that business cannot be transacted afterwards in this House? I disregard such threats, and I will say, with the gentleman from Delaware, that I will proceed, and pursue the dictates of my own mind.

Mr. DENNIS spoke in favor of the postponement to the same effect with the preceding speakers. In alluding to the act of the State of Maryland he said he did not know how it had become fashionable to consider the sentiments of the Legislature as synonymous with those of the people. He did not believe the opinion of the people in favor of the repeal. In the district he represented, their opinion was decidedly against it.

The gentleman from Kentucky says we had a full opportunity of investigating this question when the bill passed. But it is necessary to say that the Constitutional question involved in the repeal could not be involved in passing the law.

Mr. BAYARD.—I am bound to acknowledge my gratitude to the gentleman from Virginia for the respect he entertains for us, and in return I beg leave to tender him the homage of my high respect.

Gentlemen say we have been accommodated with a postponement according to our wishes, and that they had not expected any delay after this accommodation. I confess this was my expectation at the time. But this error arose from the bill then on our table being blank as to the time of its taking effect. I did not then know that its operation was not to take effect till the 1st of July.

Mr. B. did not believe the subject was in a state of maturation for decision. It was declared the new courts had no business—that the old ones were sufficient. But on what was this declaration founded? On Presidential information, in which several errors had been pointed out, and which was very incorrect. Besides, he believed the President had no right to obtain this information in the mode he had used, and the clerks of the courts were not bound to comply with the request of the Secretary of State. From his own personal knowledge, he knew the document to be incorrect, as far as related to his district, in which no chancery suits were stated to have been brought, whereas he had been engaged in several. This was an additional reason for further delay to get more accurate information.

Mr. HEMPHILL had always thought it was a rule in deliberative bodies, when a single member asked time for information to grant it, when no other business would be deranged by it. Besides, he felt himself in a peculiar situation. The Legislature of Pennsylvania was about instructing its representatives to vote for a repeal of the law of the last session. If the reasons they assigned should be satisfactory to him, he should vote for a repeal. He wished time to consider them.

Mr. SMILE said he believed the minds of the members were not to be made up by the talking of gentlemen, though they may think we stand in need of their instruction. At one circumstance he could not help expressing great pleasure. The people are now of some consequence. How often had he heard in that House the terms "sovereign people," pronounced with a sneer. But he thanked God the people were now acknowledged to be of some consequence. He had always thought the public opinion should be attended to, and if he thought that opinion against the repeal, he would not vote for it.

It was said the respectable bar of Pennsylvania had petitioned against the repeal, and great weight was attached to their sentiments. But who are these characters? Are they disinterested? Were they not lawyers, and did they not know the more courts the more business? But in opposition to their interested opinions were to be placed the sentiments of the Legislature of Pennsylvania, declared by a great majority of both Houses.

Mr. EUSTIS having been for the postponement until this day, could not sit silent under the imputation of precipitancy. The recollection of every gentleman must convince him of the extreme candor and fairness of the majority of the House. The gentleman from Delaware, when this business was first brought up, had asked for a postponement, and had said that if postponed to this day, he would be prepared to enter upon the discussion. He had been indulged in his request. This then is not our, but their measure; not our day, but their day. He must say the indulgence had proceeded from a very honorable and accommodating disposition, that called for a different return from that side.

Whatever was the ultimate disposition of the business, on which he felt not very solicitous, he

thought it his duty to state these circumstances. Gentlemen, too, must see that this motion is perfectly fruitless, for whatever might be the real question before the House, the merits of the main question were sure to be discussed.

Mr. GODDARD was sorry any charge of precipitancy had been made. Yet he thought there were weighty circumstances that recommended a postponement. He had wished for a reference to a select committee, that should fully examine the subject. But this was refused. He now wished to avoid the Constitutional question. Gentlemen seem to think the Constitutional question the only one on which we can vote. He saw not this. Gentlemen will not surely, to establish a Constitutional question, repeal a law that is useful. He wished, then, to avoid the necessity of giving a legislative construction to the Constitution, as he feared deciding a question that will go greater lengths than gentlemen are aware of. He would wait for an expression of the public will whether the law was promotive of national good. If it appeared that it was, they might be willing to avoid the Constitutional question. They might agree to bury the hatchet as to that question, a decision of which may extremely agitate the public mind.

Gentlemen say we are afraid to meet the Constitutional question. I am, said Mr. G., afraid to meet it. It may perhaps be owing to the weakness of my nerves; but I feel as if I should be brought by it into a very unpleasant situation. Not because I have not made up my mind on the constitutionality of it, but from other motives.

Mr. GRISWOLD said he should not have again troubled the House, but for the remarks of the gentleman from Massachusetts, who had said this is our day; but certainly he had mistaken the transaction. When the bill came from the Senate, we asked for a reference to a select committee to elude the Constitutional question. This was negatived. We then asked for delay. An early day was named. The gentleman from Kentucky had the generosity to name this day. It is not then our day, but their day.

The gentleman from Pennsylvania, alluding to the memorial from the bar of Philadelphia, says they are mere lawyers, interested in what they pray for. But he would say that bar was elevated too high to be affected by anything that could fall from the gentleman from Pennsylvania. Their interest was directly the reverse of that ascribed to them. The fewer the courts the greater the delay, and the greater delay the more the business.

Mr. S. SMITH said he had now little hopes that the discussion of the main question would commence to-day, which was already too far gone to expect it. Still he hoped the motion of postponement would not prevail, so that the House might be prepared to enter upon the subject to-morrow. He agreed with the gentleman from Massachusetts that this was emphatically their day. True it was, the gentleman from Kentucky had named it; but had not the gentleman from Delaware got up and solicited for this day, and declared that, if

FEBRUARY, 1802.

Judiciary System.

H. OF R.

the indulgence were granted, he would feel it a duty to be prepared to go on with the subject with calmness, dignity, and deliberation?

I came to the House, therefore, said Mr. S., with this expectation, and I fully expected that gentleman would open the discussion. I came prepared to listen to him. Why? Because this is a subject on which I want information; and being one in which I could take but little share, I wished to profit by the ideas of ingenious gentlemen who may discuss it. Gentlemen now say they want information. Thence the necessity of commencing that discussion which is to give them information. They say they wish to remove all prejudices. Why not, then, openly and boldly eradicate them? The gentleman from Delaware had told us he would obey the public will; and he adds, if the bill passed it will prostrate the Constitution. Will he, then, if the public will shall appear to be for a repeal, vote for it? I am inclined to think the gentleman went further than he intended when he made this declaration. The information gentlemen say they want can have no effect upon those who have made up their minds upon the Constitutional question, for I cannot believe they would violate their oaths to conform to the public will. Is it to operate upon us? No; for we are ready to act—to say we have heard the public voice, and are prepared to obey it.

Mr. HOLLAND spoke against the postponement. After assigning his reasons at some length, he proceeded:—Why, then, wait? For the single reason offered by the gentleman from Connecticut, viz: his wanting to avoid the Constitutional question; did he not mean by this to delay, to embarrass, and perhaps defeat the bill? Give me leave to say, said Mr. H., I do want to meet it, and to get rid of it, that we may proceed to other business.

Mr. DANA.—The gentleman from North Carolina need not to have told us he meant not to compliment us. We might have learned that from his conversation. But I wish to know what authorizes him to make these charges? My colleague has said he did not wish to meet the Constitutional question. But has he said he meant to procrastinate, to embarrass, to defeat it? Is that gentleman so much in the habit of expediting business as to be authorized to make these charges? I acknowledge that my mind recoils at the decision of the Constitutional question, because I deprecate the result, if decided in one way. My mind recoils, because it goes to shake the foundations of society; because it shakes questions that I thought were fixed, and which were not to be discussed; because if decided one way, we shall be sent back to the first principles of society. The gentleman cannot tell why we are for delay. The gentleman from Massachusetts is a scholar. He may appreciate my remarks, if others cannot. We want information—that information which flows from books—he, having enriched his mind with the stores of knowledge, knows its value. Can any man show me a library, public or private, where I can get this information? We labor here under peculiar disadvantages. But it is probable

that gentlemen, after representing their civility to us, will at last vote us down.

Mr. GODDARD explained what he had previously said.

Mr. BAYARD.—It is my misfortune to be perpetually misunderstood by the gentleman from Maryland. I am at a loss to know how gentlemen on this side are more misunderstood by him than any other member. Is it that his anxiety to answer us induces him to state fallacies in order that he may refute them? He says, I stated that I would come perfectly prepared to-day. I did not say we would come forward to discuss the subject. The same gentleman charged me with saying I would instruct the House. This is impossible. It might be compatible with the character of that gentleman, but I never could say so.

The gentleman has also charged me with saying I would vote for the repeal, if the public will was for it. I said not so. I did say the Constitution was the property of the people; that the majority had a right to construe it as they pleased; and that I would obey their construction, that is, I would bow to what appeared manifestly the sense of the majority. The gentleman from Massachusetts had said this is our day. Perhaps, it is emphatically our day—perhaps our last day. I have no doubt gentlemen would be gratified if it were our last day.

The fact is, when an unprecedented precipitation was attempted, I agreed to this day, because I could not expect a longer day would be granted. It was, however, as much a forced day, as any other day could have been. As to the remarks of the gentleman from Pennsylvania, it was painful for strangers to be obliged to defend the friends of that gentleman from reflection. But I will say to that gentleman there was no ground of fact to justify his aspersion. He had charged his political friends with having apostatized—with having renounced their party—with having violated their political faith.

Mr. SMILIE said he had said no such thing.

Mr. BAYARD was glad the gentleman knew what he did say, which was an unusual thing. I understood him to say they acted from interested motives. I drew the inference. If governed by interest, I ask whether they are not apostates; whether they have not renounced their political creed? Could anything be more base, on a question involving Constitutional grounds, than to be governed by motives the most wretched and contemptible?

The question of postponement was then taken by yeas and nays; which were—yeas 35, nays 61, as follows:

YEAS—James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George

B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Motion to adjourn. Lost—yeas 37.

Mr. DENNIS moved a postponement till Monday next.

Mr. RANDOLPH.—I will state as briefly as possible the motives which influence me to be against the postponement moved by the gentleman from Maryland. I am sensible his motives for a postponement may be pure. I believe they are pure. But when I compare the reasons of the friends of the postponement, and find them so various and irreconcilable, I can discover no reason for gratifying their request. One gentleman says he wants information of the state of the public will. Another gentleman says it is a great Constitutional question, and whatever may be the public opinion, he must vote from the dictates of his own judgment. Another gentleman wishes to understand the resolutions of the Legislature of Pennsylvania, by which he may perhaps be governed. Another gentleman says the legislative vote is no indication of the public mind. Gentlemen say their reasons are cogent; but I beg them to tell me on which of their various and contradictory reasons they mean to vote for a postponement—reasons so irreconcilable that if one was correct the others must be false.

I should not have risen now, but from seeing the day nearly gone, and from being prepared for a reiteration of motions that will consume the whole of it.

Other reasons are urged. We are told the great Constitutional question may be evaded. When I say so, I do not mean to impute to gentlemen any disposition to embarrass the discussion, but a disposition to shrink from a question which they say will give a stab to the Constitution. Believing as they do, I think the fear an honorable fear. But thinking differently myself, it becomes me to speak differently. It becomes me to declare that this is a great Constitutional question that ought to be decided, and decided soon. It ought not to be left till the public mind shall be acted upon incorrectly—till some twenty or thirty years hence it shall be operated upon by war, by intrigue, or

by improper excitement. When I see all the dangerous motives, such as war without and treason within, which too frequently operate, and compare the state of the country under their influence, with its present situation, entirely free from them, I say this is the period for decision. For decided it must be. I feel for gentlemen, whose correct disposition it is to shrink from a question whose result must be adverse to them. I have been in the same situation. I, like them, have shrunk from some questions. But did they wait for me, till their power was taken from them? According to this course, no decision can take place but that which conforms to the fears of a minority.

I recollect an eloquent member of this House from Massachusetts having deprecated indecision as the worst of all decisions. The saying was paradoxical, but the doctrine was sound. I wish the Constitution settled, that it may be no longer afloat. I wish the nation to settle it, that all further discussion may be removed. I wish to know whether the Judiciary is a co-ordinate or a paramount department of Government.

We have heard much on the points of constitutionality and expediency. All these considerations belong in strictness to that state when the bill shall be taken up, and not to that state when the only question is, shall the bill be taken into consideration? But as gentlemen have reiterated their objections on the point of expediency, and in supporting those objections have taken only one ground, I hope I shall be indulged in stating that the very reasons of the gentlemen on that ground would govern me in making a different decision. They tell us that by the bill we propose to repeal justice is brought home to every man's door. But the House will please to recollect that we are not to decide whether justice shall be brought home to every man's door; this is not the exclusive legislature to which this only belongs. It belongs to the States, and I will say, if they do not perform their duty, this House cannot assume the performance of it. The Constitution never intended it, and this bill does not accomplish it; because while the large States, under the State governments, are subdivided into twenty districts, this law only divides them into two. Nor is it necessary under our law that there should be this subdivision, because the Federal authority of the courts does not extend to cases between man and man, or to those ordinary cases that require that justice should be brought to the door of every citizen. So long as Federal courts exist, to which there may be an appeal or removal; so long as the States are prevented from emitting paper currencies; so long as one part of the Union is prohibited from cheating its neighbors; so long as the foreigner has an impartial tribunal to appeal to, the Constitution is satisfied. This it is for which the Constitution was made, and that which makes the gentleman from Connecticut vote against the repeal of this act, makes me for it. I mean in connexion with other motives.

These are my reasons for opposing the motion. The question of repeal is a great Constitutional question, and we must settle it. It is a question

FEBRUARY, 1802.

Judiciary System.

H. OF R.

that will be agitated so long as we remain a nation, until it shall be decided, and this is the only tribunal before which it can be decided.

Mr. DENNIS rose to explain what he said about the will of the people being evinced in the votes of their Legislature. He did not say that this was altogether to be disregarded, but he had some reason to believe that in the State of Maryland, the people did generally approve of the act in debate which passed that State. What criterion of the public will was the votes of a State on a particular question about which, at the time of election, the candidate was not questioned as to his opinion? None. When this Legislature was elected, Mr. D. did not suppose there was a citizen of Maryland who supposed this question would have been agitated. How often were Congress told that the Alien and Sedition bills were contrary to the will of the great majority of the people of the United States? and yet those bills were passed. A good proof that it was not then the opinion of the gentlemen that the Legislative acts were criterions of the public will.

Mr. NICHOLSON had no doubt but a majority of the people of Maryland would approve of this repealing law. What evidence could his colleague (Mr. DENNIS) have to the contrary? He believed that the gentleman spoke the truth when he said that the people would not approve of it in the district he represented, but that could by no means be a criterion by which to judge of the whole State: that was yet to be tried. In a Government like ours, depending upon the popular will for its support, it were to be wished that this popular will could be accurately collected on every important question, previous to the discussion of the Legislature. If it could be, he would be willing to modify his vote by that will. From present impressions, he had no doubt but the popular will would operate in favor of the bill under consideration, and against the new system. He knew of no way to obtain that will better than it could be known by the representatives immediately from the people; and even waiting till March would not evince that will with more accuracy than it was now known, although even 50,000 people should petition the Legislature. He referred to a period in the British history when a petition from 80,000 people was presented to Parliament against a certain measure, and yet it was said not to be the popular will. If they could by any means obtain the popular will, Mr. N. declared himself willing to sit here six, eight, or ten months to await it; but as they could not, the responsibility must rest on the persons who gave their votes. He was perfectly willing that the public eye should observe his conduct, uninformed as it appears to some gentlemen to be.

The question was then taken by yeas and nays, and the motion of postponement lost—yeas 34, nays 58.

YEAS—James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Hunger, Thomas Lowndes, Ebenezer Mattoon, Lewis R.

Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Jos. H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. GILES moved that the House resolve itself into a Committee of the Whole.

Mr. RUTLEDGE moved an adjournment. Lost, yeas 38, nays 44.

Mr. GILES's motion was then agreed to, and the House went into a Committee of the Whole, Mr. J. C. SMITH in the Chair.

The Committee then rose, and asked leave to sit again.

TUESDAY, February 16.

A representation of sundry merchants and traders of the city of Philadelphia, in the State of Pennsylvania, was presented to the House and read, praying that an act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States," may be continued in force; or that, if it shall be deemed expedient by Congress to repeal the provision of the said act in relation to the general establishment of the courts therein mentioned, the said repeal may not extend to the courts of the third circuit of the United States, for the reasons specified in the said representation.

Also, a memorial of the Corporation of the Chamber of Commerce of the City of New York, praying that this House will not pass into a law a bill sent from the Senate, and now depending before the House, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Ordered, That the said representation and memorials be referred to the Committee of the whole House to whom was committed, on the fourth instant, the bill from the Senate last mentioned.

The House resumed the consideration of the amendment reported on the fourth instant, from the Committee of the whole House, to the bill for the relief of Daniel W. Coxe and others; and, hav-

ing made a farther progress therein, the further consideration was postponed till to-morrow.

JUDICIARY SYSTEM.

The House then went into Committee of the Whole on the Judiciary bill from the Senate.

Mr. HENDERSON.—I should not rise to offer my opinion on the great question before the Committee, were I not placed in a situation different from that in which I have been since I have had the honor of a seat in this House. The Legislature of the State of North Carolina, one of whose representatives I am on this floor, have seen proper to instruct their Senators and to recommend to their Representatives in Congress, to use their exertions to procure a repeal of the law passed the last session of Congress, for the more convenient organization of the Courts of the United States, and the bill on your table has for its object the repeal of this law, and as I shall probably vote against its passage, a decent respect for the opinions of those who have framed and sent forward those resolutions, demand that I should give the reasons which influence my conduct.

And here, sir, I cannot forbear lamenting extremely that I should unfortunately be placed in a situation where the highest obligations of duty compel me to act in opposition to the wishes of that community to which I immediately belong. It is certainly of great importance that, as public functionaries, we should not only discharge those trusts committed to us with fidelity, and for the general good, but in such a manner as to give satisfaction to those for whom we are acting.

And if I know the feelings of my own heart, I declare that, next to the consciousness of having performed my duty with uprightness, my highest satisfaction is the knowledge that in the discharge of this duty I meet the approbation of my fellow-men. But, sir, if this approbation is only to be obtained by the unconditional surrender of my understanding, and the violation of my oath, I hope I shall be excused if I do not make this sacrifice at the altar of public opinion. Indeed, sir, were I disposed to forego my own opinion, and adopt that of the Legislature of my own State—were I inclined to say, they will be done, and not mine, I should first demand of them an absolution from the oath which I have taken to support the Constitution of the United States. As long as that oath is binding on me, I see an insuperable objection to my acting in conformity to their wishes.

I will further remark, sir, that I am not a little surprised that that august body should have undertaken to decide on a question not necessarily before them, without having an opportunity of hearing the arguments which may be used here, either on one side or the other. I will not permit myself for a moment to believe the measure originated in a want of confidence in those who represent the State and the people in this Assembly. And yet, if that confidence exists, the reasons for this procedure do not immediately present themselves to the mind.

I hope, sir, it will not be understood that I mean

to cast the most distant shade of disrespect on that body. I feel too great a respect for the Legislature of my native State to be guilty of such an attempt. No doubt but that they were influenced by the purest and most correct understanding. It does not follow, by any means, that because my weak and feeble mind cannot discover perfect propriety in the conduct of men, that therefore it does not exist.

Having premised thus much, Mr. Chairman, I will proceed to an examination of the question under consideration. It has been usual to divide it into two parts: first, the expediency; and, secondly, the authority of Congress to pass the law on the table. This is a natural and correct division; but I shall invert the order of considering the question, and first examine our power to act, before we consider the expediency of acting. And if, after a calm and candid review of the Constitution, it should be found that we are prohibited from passing the bill, there will be no necessity for inquiring into the expediency of repealing the law passed at the last session of Congress for organizing our courts of justice. The relative merits of the old and new Judiciary system will be entirely out of view. For I am confident that there is not a member of this body who would wish to pass the bill on your table, if in doing it we must violate the sacred charter under which we are now assembled.

The people of America have obtained and established that the powers of Government shall be vested in three great departments: the Legislative, the Executive, and the Judicial. They have said that there shall be a House of Representatives, the members of which shall be chosen by the people of the several States every second year. Though this House is composed of members chosen by the people immediately; though they can have no other interest than the great community from which they were sent; though they must return to the common mass in the short period of two years; yet enlightened America did not see proper to entrust the power of making laws to this body alone; they knew that the history of man, and the experience of ages, bore testimony against the safety of committing this high power to any one Assembly not checked by any other body. They have therefore erected another branch of the Legislature, called the Senate, the members of which are not to be elected by the people immediately, but by the sovereignties of the several States; they are to be chosen for six years, and not for two; and the qualifications requisite to entitle those to a seat is different from that of a member of this House. To these bodies are given the power of initiating all laws; but after a bill has passed both of these Houses, before it becomes of binding obligation on the nation, it must be approved of by the President; it is a dead letter, until life is given by the Executive. The President is elected not by the people, not by the Legislatures of the several States, not by either House of Congress, but by Electors chosen by the people. He is to hold his office during four years. This is the second great department

FEBRUARY, 1802.

Judiciary System.

H. OF R.

of the Government. It will be easily discovered from this cursory view of our Constitution, the caution and jealousy with which the people have conferred the power of making laws, of commanding what is right, and prohibiting what is wrong. But, sir, after this law was made, after its authoritative mandate was acknowledged by the nation, it became necessary to establish some tribunal to judge of the extent and obligation of this law. The people did not see proper to entrust this power of judging of the meaning of their laws, either to the Legislative or to the Executive, because they participated in the making of these laws; and experience had shown that it is essential for the preservation of liberty that the Judicial and Legislative authorities should be kept separate and distinct. They therefore enacted a third department, called the Judicial, and said that "the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. The judges both of the Supreme and inferior courts shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

It is admitted, I understand, by all parties, by every description of persons, that these words, "shall hold their offices during good behaviour," are intended as a limitation of power. The question is, what power is thus to be limited and checked? I answer, that all and every power which would have had the authority of impairing the tenure by which the judges hold their offices, (if these words were not inserted,) is checked and limited by these words; whether that power should be found to reside in Congress, or in the Executive. These words are broad and extensive in their signification, and can only be satisfied by being construed to control the Legislative as well as the Executive power. But gentlemen contend that they must be confined to limiting the power of the President. I ask gentlemen, what is there in the Constitution to prove their signification to this end alone? When you erect a court and fill it with a judge, and tell him in plain, simple language, that he shall hold his office during good behaviour, or as long as he shall behave well; what, I beseech you, sir, will any man, whose mind is not bewildered in the mazes of modern metaphysics, infer from the declaration? Certainly that the office will not be taken from him until he misbehaves; nor that he will be taken from the office during his good behaviour. Under this impression he enters upon his duty, performing it with the most perfect satisfaction to all persons who have business before him; and the Legislature, without whispering a complaint, abolishes the office and thereby turns out the judge. The judge is told this is no violation of the compact; although you have behaved well, although we have promised that as long as you did behave well you should continue in office, yet, there is now no further necessity for your services, and you may retire. These words, "during good behaviour," are intended to prevent the Presi-

dent from dismissing you from office, and not the Legislature from destroying your office. Do you suppose, sir, that there is a man of common understanding in the nation, whose mind is not alive to the influence of party spirit, that would yield his assent to this reasoning? I hope and believe there is not. But, sir, how is it proved that the President would have had the power of removing the judges from their office, if these words, "during good behaviour," had not been inserted in the Constitution? Is there any words in that instrument which gives the President expressly the power of removing any officer at pleasure? If there are, I call upon gentlemen to point them out; it does not result from the fashionable axiom, that the power which can create can destroy. The President can nominate, but he can appoint to office only by the advice and consent of the Senate. Therefore, it would follow, if the power of displacing results from that of creating, that the Senate should participate in displacing as well as creating officers. But however this may be, it is certainly a mere constructive power which he has exercised, because the Legislature have, from motives of expediency, acknowledged that he had it. If the Constitution does not necessarily give the President the right of removing officers at pleasure, and if that right depend upon Legislative acts or constructions, where would have been the necessity for inserting these emphatic words as a check and limitation of Executive power, where without them the President has no such power? You are taking great pains to control a power which does not exist. The persons who framed our Constitution knew that a power of removal in ordinary cases must exist somewhere. They took care, therefore, that in whatever hands it might fall, the language of the Constitution respecting the tenure of the office of a judge should be co-extensive with the whole power of removal, whether it should reside in one or in more hands.

But, sir, these words, "during good behaviour," are familiar to the American people. When the political bands which united us with Great Britain were burst asunder, and we assumed among the nations of the earth an independent station, most, if not all the States introduced these words into their constitutions. They were deemed essential, and a meaning has been stamped upon them which it is not in the power of this House to change. Let us for a moment examine some of the State constitutions, and see what signification must of necessity be given to these words. I will first advert to the Constitution of North Carolina, as being one with which I am best acquainted. In that instrument it is said, "that the General Assembly shall, by joint ballot of both Houses, appoint judges of the supreme court of law and equity, judges of admiralty, and an attorney-general, who shall be commissioned by the Governor, and hold their offices during good behaviour." I ask gentlemen what power is intended here to be limited and checked by the words "shall hold their offices during good behaviour?" Not the Executive, for it is well known that the Gov-

error of that State cannot appoint even a constable. It could not be the meaning of that constitution to check his power of removal, for that of appointment is not anywhere given to him. Then these words must mean, that the Legislature should not have the power of removing the judges from office as long as they behaved well. If you do not give this signification to the words, they are of no importance, and might as well have been left out of the instrument. I hope the feelings of the people of North Carolina will not be hurt, and their understandings insulted, by telling us that the meaning of the words may be satisfied by construing them to extend to a prohibition of the Legislature displacing the judges, and proceeding to the election of others, without those displaced being guilty of misbehaviour. If this is correct, what security, sir, have the people then for the independence of their judges? The Constitution has told them that they should be judged by men who, during the time they behaved well, should continue in office, or what is the same thing, should hold them during good behaviour. But they are now informed that this was intended to operate as a check upon the Legislature's displacing them by selecting others to fill their offices when they had not misbehaved, but not to prevent their passing a law repealing that act by which the appointment to office was made; or in other words, our Assembly are expressly forbidden to impair the tenure by which our judges hold their offices, as long as they behave well; but they can repeal the law, and the judges are out of office, though they may be the most virtuous, upright, and able men in the country, and have discharged their duties faithfully. Are the gentlemen on this floor from North Carolina prepared to give this construction to that constitution? Are they prepared to tell their constituents that the provisions of their constitution may be thus evaded, and the whole power of Government, Legislative, Executive and Judicial, be concentrated in the General Assembly, and absolute despotism imposed upon them? If they are not, I conjure them to pause before they give their vote for the passage of the bill on the table. I will further observe, Mr. Chairman, that words of the same import with those I have quoted from the Constitution of North Carolina, are to be found in the Virginia and South Carolina constitutions, in neither of which States hath the Governor the right of appointing judges.

In Virginia, sir, the judges of the supreme court, in 1792, declared that the Assembly of that State had not the power of imposing chancery duties on the district judge, and in delivering their opinions descanted at large on the independence of the judiciary, and said that the Assembly could not annihilate the office of a judge, which was secured to him by the constitution. If this is a true exposition of the constitution of that State, I ask gentlemen by what authority they now attempt to impose a different meaning on the same words, when found in the Constitution of the United States? Are we to suppose that the whole people of America were less regardful for their rights, less solicitous for independent judges, than the

people of a particular State? And unless this is conceded, the doctrine of gentlemen who advocate the passage of this bill must be incorrect.

But it has been said that the powers of each Congress are equal, and that a subsequent Legislature can repeal the acts of a former; and as this law was passed by the last Congress, we have the same power to repeal it which they had to enact it. This objection is more plausible than solid. It is not contended by us that legislatures who are not limited in their powers have not the same authority. The question is not what omnipotent Assemblies can do, but what *we* can do under a Constitution defining and limiting with accuracy the extent and boundaries of our authority. The very section in the Constitution (sec. third, art. first) which I have read, is a proof against the power of every Congress to repeal the acts of their predecessors. In the latter part of the eighth section it is proposed that the judges shall receive for their services a compensation which shall not be diminished during their continuance in office; and yet the salary was ascertained and fixed by a former Congress. The same observations may be made with respect to compensation for the President, which can neither be increased nor diminished during the period for which he shall have been elected. It is not competent for this Congress to vary the compensation to him which has been fixed by a prior Legislature. It is clearly seen, upon a little investigation, that the position which gentlemen take is too extensive, and leads immediately to a destruction of the Constitution. It does away all check, and makes the Legislature omnipotent. It has been asked, that if a corrupt and unprincipled Congress should make an army of judges, have not a subsequent Congress the right of repealing the law establishing this monstrous judicial system? I answer that they have not; the same mode of reasoning which attempts to prove this right from an abuse of power will also prove that you may lessen the compensation of your judges. May not equal oppression be imposed upon the people by giving your judges exorbitant salaries as by increasing their numbers? May not the same corrupt and unprincipled motive which would lead men to the raising of an army of judges lead them to squander the public money? And may they not, instead of giving their judges two thousand dollars a year, give them two hundred thousand? And yet, sir, if it were to take place, I know of no authority under the Constitution to lessen that exorbitant compensation. The Government of our country is predicated upon a reasonable confidence in those who administer our public affairs. They must have the power of acting for the public welfare, and this would never have been given them if the possible abuse of this power were a sufficient reason for withholding it.

I will take the liberty of observing further, that this part of the Constitution, which forbids lessening the compensation to the judges during their continuance in office, furnishes a strong argument that it was the intention of the people to place their judges out of the control of the Legis-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

lature as long as they behaved well; that they did mean to render them independent of the Legislature to a certain extent, is obvious, inasmuch as they inhibit the power of reducing their salaries. For it is evident, that if they could take from them their compensation, they might drive them from office, and the consequence would have been, that our judges would have felt all the dependence which results from a consciousness that another body has the power of diminishing their comforts. I ask gentlemen if the framers of this Constitution intended to give Congress the power of abolishing the office of a judge, by repealing the law which created the office, and thereby displace the judge, where could have been the propriety of forbidding his salary to be diminished during his continuance in office?

Is it possible to suppose that they were more anxious to secure that independence which results from permanency of compensation, than that which results from permanency of the office itself? That they should have been altogether regardless of the power which Congress was to have over the office, but limit with the utmost strictness their power of diminishing the salary, when the office itself, upon which the salary depends, was to be at the mercy of Congress? I believe that such folly cannot, with justice, be attributed to those great men who gave existence to this instrument.

Again, sir, the construction which gentlemen on the other side of the House contend for, tends to the concentration of Legislative and Executive powers in the same hands. If Congress, who have the power of making laws, can also displace their judges by repealing that which creates the offices they fill, the irresistible consequence is, that whatever law is passed the judges must carry into execution, or they will be turned out of office. It is of little importance to the people of this country whether Congress sit in judgment upon their laws themselves, or whether they sit in judgment upon those who are appointed for that purpose. It amounts to the same despotism; they in fact judge the extent and obligations of their own statutes by having those in their power who are placed on the sacred seat of justice. Whatever the Legislature declares to be law must be obeyed. The Constitutional check which the judges were to be on the Legislature is completely done away. They may pass *ex post facto* laws, bills of attainder, suspend the writ of habeas corpus in time of peace, and the judge who dares to question their authority is to be hurled from his seat. All the ramparts which the Constitution has erected around the liberties of the people, are prostrated at one blow by the passage of this law. The monstrous and unheard of doctrine which has been lately advanced, that the judges have not the right of declaring unconstitutional laws void, will be put into practice by the adoption of this measure. New offences may be created by law. Associations and combinations may be declared treason, and the affrighted and appalled citizen may in vain seek refuge in the independence of your courts. In vain may he hold out the Con-

stitution and deny the authority of Congress to pass a law of such undefined signification, and call upon the judges to protect him; he will be told that the opinion of Congress now is, that we have no right to judge of their authority; this will be the consequence of concentrating Judicial and Legislative power in the same hands. It is the very definition of tyranny, and wherever you find it, the people are slaves, whether they call their Government a Monarchy, Republic, or Democracy.

Mr. Chairman, I see, or think I see, in this attempt, that spirit of innovation which has prostrated before it a great part of the old world—every institution which the wisdom and experience of ages had reared up for the benefit of man. A spirit which has rode in the whirlwind and directed the storm, to the destruction of the fairest portion of Europe; which has swept before it every vestige of law, religion, morality, and rational government; which has brought twenty millions of people at the feet of one, and compelled them to seek refuge from their complicated miseries in the calm of despotism. It is against the influence of this tremendous spirit that I wish to raise my voice, and exert my powers, weak and feeble as they are. I fear, sir, on the seventh of December, it made its appearance within these walls, clothed in a gigantic body, impatient for action. I fear it has already begun to exert its all-devouring energy. Have you a judiciary system extending over this immense country, matured by the wisdom of your ablest and best men? It must be destroyed. Have you taxes which have been laid since the commencement of the Government? And is the irritation consequent upon the laying of taxes worn off? Are they paid exclusively by the wealthy and the luxurious part of the community? And are they pledged for the payment of the public debt? They must be abolished. Have you a Mint establishment, which is not only essentially necessary to protect the country against the influx of base foreign metals, but is a splendid attribute of sovereignty? It must be abolished. Have you laws which require foreigners coming to your country to go through a probationary state, by which their habits, their morals, and propensities may be known, before they are admitted to all the rights of native Americans? They must be repealed, and our shores crowded with the outcasts of society, lest oppressed humanity then should find no asylum on this globe!

Mr. Chairman, if the doctrine contended for by gentlemen on the other side of the House should become the settled construction of the Constitution, and enlightened America acquiesce with that construction, I declare for myself, and for myself alone, I would not heave a sigh nor shed a tear over its total desolation. The wound you are about to give it will be mortal; it may languish out a miserable existence for a few years, but it will surely die. It will neither serve to protect its friends nor defend itself from the omnipotent energies of its enemies. Better at once to bury it with all our hopes.

Mr. R. WILLIAMS said he could not believe it

necessary in the discussion of this question, which he acknowledged to be important, to reply to the remarks of his colleague on the danger of a destruction of the Constitution, if this bill passed; nor could he believe there existed any analogy between our situation and that of countries in a revolutionary state. Nor could he see the connexion between this subject and a repeal of the internal taxes, diminution of the army, or the abolition of the Mint. He should, therefore, take the liberty of placing all these considerations aside, as having no real relation to the subject.

My colleague has commenced his remarks with deploring that the Legislature of North Carolina should give instructions on a subject on which they cannot possess so much necessary information as is required for a correct decision. In this regret he could not agree with his colleague. He believed they had all the information requisite for a correct judgment. If this subject is so all-important, if it involves a great constitutional question, how can we presume the Legislature of a State which must be deeply interested in it, to be ignorant of its merits? How will the doctrine of the gentleman, which attaches so much importance to the petitions on your table, apply? Will he pretend to say the Legislature of that State is less informed than citizens who occupy but a small section of the country?

In considering this question, his colleague had gone on the ground of constitutionality. In his arguments he has formed a chain of reasoning merely on the abuse of power. He would agree with him that it was impossible to devise any system of Government from which effects may not follow that shall be pernicious. But is this any good reason against giving effect to a reasonable construction? Is it fair to say, because the Legislature have the power of abolishing the office of a judge, that therefore they will turn every judge out of office? This was to suppose that we were lost as to the principle of Government, and ripe for a revolution.

That there must be some place where the true meaning of the Constitution must be determined, all would agree. Where then is it? In what department? The people have constituted two departments of authority, the Executive and Legislative, emanating directly from the people; and have directed them to form another, further removed from the people. Are we then to be told there is more safety in confiding this important power to the last department, so far removed from the people, than in departments flowing directly from the people, responsible to and returning at short intervals into the mass of the people?

Agreeably to our Constitution a judge may be impeached. But if the doctrine contended for on the opposite side prevails, how is this salutary part of the Constitution to operate? Suppose a law to pass, prescribing any duties to a judge; he is to decide whether it is constitutional or not; if he has this right, however he may err, he commits no crime; how, then, can he be impeached?

But my colleague says this is turning the judges out of their offices. But I do not see it in this

point of view. I believe the natural consequence of our construction is, that the judge shall hold the office while it exists, and so long as he behaves well, independent of any Legislative or Executive control.

But the appointment of a judge is said to form a contract. Between it and a contract I can see no analogy. There must be two parties to a contract. I will ask, whether a judge is to be considered as a party at the time when the law passed, before there are any courts established, and which are only contemplated to be established?

Again: for whose interest were these offices created? Not for the interest of the individual officers, but the people. If, then, the passage of the law sprang from a regard to the interest and convenience of the people, ought not its continuance to depend upon the same interest and convenience?

To make the judge independent in the tenure of his office, while it remains, and to protect his salary from diminution is sufficient; and it is making him as independent as judges ever have been in the country to which gentlemen are so apt to refer for whatever is worthy of imitation. In England, the Judiciary is said to form the strongest pillar of the Government, and the greatest security of the people; and yet are they independent of the Legislature? Are they not easily removable on the address of the two Houses, while here they can only be removed on the conviction of a crime?

If this doctrine is to extend to the length gentlemen contend, then is the sovereignty of the Government to be swallowed up in the vortex of the Judiciary. Whatever the other departments of the Government may do, they can undo. You may pass a law, but they can annul it. Will not the people be astonished to hear that their laws depend upon the will of the judges, who are themselves independent of all law?

My colleague has made use of an expression made before, but which I hoped would not have been repeated in this House. He says the judges were intended to guard the people from their worst of enemies—from themselves. Are the people to be told that they are so lost to a sense of their own interests, so ignorant and regardless of them, that they must take fifteen or twenty men to guard them from themselves? Is it possible that any man can attempt to make the people believe they are themselves their greatest enemies?

I will agree that there are times when checks and balances are useful. Legislative bodies may occasionally, in a gust of passion, pass improper laws; but because in a solitary instance we may pass such laws, shall we pass all authority into the hands of a few men, who, gentlemen say, know none of these passions, who are calm, cool, and wise men, who know no interests of their own, but are totally absorbed in that of the people? Suppose in our construction we should err, the evil can last no longer than two, at most six years, which are the durations of our office. The people will then dismiss us. But how can the judge be checked, or the evil he commits be remedied?

FEBRUARY, 1802.

Judiciary System.

H. OF R.

In no way but by a recurrence to revolutionary principles.

But my colleague has read the Constitution of North Carolina, which says that the judges shall be chosen by the joint ballot of the two Houses, and shall hold their offices during good behaviour. And he says this limitation cannot extend to the Executive, because the Executive has no agency in the appointment. It must, therefore, he contends, prohibit the Legislature from repealing the laws which create the office of judge. But was it not possible for the gentleman to conceive that the Legislature might, were it not for the Constitution, have said a judge shall be removed, and passed a law to that effect? Without this Constitutional provision, what would prohibit the Legislature from sweeping off all their judges, and voting in new ones?

After making these remarks on the constitutionality of the measure, I will ask what preference this law, which it is now proposed to repeal, has over the previous system? Does it pay more regard to the convenience of the people? I believe that under it only four States are divided; in all the others, the districts remain as before; and suitors, witnesses, and jurors, have to attend at the same place, under all the inconveniences they before experienced; with this difference, that the jurisdiction of the federal courts is brought down to four hundred instead of five hundred dollars.

If I believed, with my colleague, that a repeal of this law would give a death-blow to the Constitution, I would be the last man to vote for it. But believing, as I do, on the contrary, that the doctrine now contended for would destroy the vital principle of the Constitution, by submitting the entire sovereignty of the nation to judiciary control, and that the only way of resisting this doctrine is to repeal the law, I vote most cheerfully for its repeal.

Mr. HEMPHILL said he would claim the attention of the Committee a short time upon the important question now before them; that his task would principally be to arrange arguments which he had already heard or seen.

He would say but very little as to the expediency of passing the bill on the table; he would not go into a minute comparison of the two judicial systems; but should content himself with submitting a few general observations. The alleged inutility of the law passed the 13th of February, 1801, rested principally upon document No. 8, which accompanied the President's Message. That document contains a list of all suits at common law, suits in chancery, criminal prosecutions, and admiralty causes, which have been commenced in any of the federal courts in the United States, from May, 1790, to April, 1801. It appears that within the time included, eight thousand two hundred and seventy-six causes have been instituted, and of that number one thousand five hundred and thirty-seven are now depending; in the enumeration the State of Maryland is omitted, and probably, with the addition of causes in that State, the aggregate number would be nine thousand, and the causes now depending about

one thousand six hundred. With a list of one thousand, six hundred causes undecided, and an annual increase of seven or eight hundred, is it possible, with no other assistance than would be received from the district judges, that six men could perform all this multiplicity of business in its original and final stages, to be transacted at so many different and distinct places, in a country extending one thousand six hundred miles; and that the causes could be decided with that dispatch which the public good requires? What every one would suppose to be the natural consequence of such a system, has been witnessed by the gentlemen of the bar in the eastern part of Pennsylvania; who have deliberately and anxiously declared to you, that in their opinion a renewal of the late system would be attended with great public inconvenience, and without advert- ing to the casualties of weather or indisposition, as inevitable consequences, were embarrassment, uncertainty, and delay.

Sixteen judges were appointed at an expense of thirty-two thousand dollars, three thousand dollars of which will be saved on the first vacancy in the Supreme Court; and when we are about calculating the expense, we should deduct the savings which the new system will certainly make. It must be acknowledged that many of the parties and witnesses will not have so far to attend court. It must be acknowledged that the causes would be sooner decided than under the old system; the unfinished business will rather increase than diminish. Omitting the admiralty causes, there will be about one thousand five hundred undecided causes remaining, and of course three thousand suitors, and if only one witness to a cause, there will be four thousand five hundred people in motion, attending courts. From the two causes which I have mentioned, there will necessarily be a considerable saving; some estimate might be made, and this saving will in some measure be equalized, as no person knows how soon he will be a party or a witness. It is for the trifling difference between this saving and the salaries of a few judges, that the liberty of the people is to be endangered; and, if I am not mistaken, a gentleman from Virginia, (Mr. GILES,) when the apportionment bill was before the House, declared that the expense of the Civil List was a trifling thing, a mere speck on the pages of expenditure, and that it was the expense of maintaining armies and fleets that we should guard against.

The expense of the augmented representation in this House will be nearly, if not quite, equal to the salaries of the judges. I think I may with great safety appeal to the people, and ask them which expense will be most to their advantage? Before I enter into the discussion of the main question, I beg leave, Mr. Chairman, to make a few preliminary remarks. The first is, as to the salaries of the judges of the district courts of Kentucky and Tennessee, which were increased by law, which must be acknowledged to be so far Constitutional. Can you repeal the law generally, and thereby diminish the compensation of the judges? I do not mean to contend that the office

of a judge is to outlive the Constitution. Every officer is removable by a change in that part of the Constitution on which his office depends; if, by any event, the Constitution should be entirely dissolved, the officers will revert to the common class, and the people must again begin to build up a new government. It has been said that our Constitution exhibits the absurdity of an office without an officer; *quasi* a judge, entitled to his salary, without any duty to perform, and the strange phenomenon of an officer not amenable to your laws, to your Constitution, or to the people. These observations amount to nothing; they are taking that as data which is the only thing to be proven; for the sole question is, can an office be taken away from a judge? I think no person will seriously contend that the framers of the Constitution ever intended that a man should be entitled to his salary, when he is not in the possession of his office; indeed, the words in the Constitution do not embrace the extent of the proposition; the words are, "during his continuance in office."

In regard to the main question, Mr. Chairman, I will in the first place read the ninth and tenth amendments to the Constitution:

"9. The enumeration, in the Constitution of certain rights, shall not be construed to deny or disparage others, retained by the people.

"10. The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The question is between the United States and their rulers. In behalf of the people it is contended, that the power you are about to exercise does not belong to you, but that it was reserved to the people at the formation of the Constitution; the rulers say no, the power belongs to us, and we can and will exercise it, whenever we deem it expedient. I submit to the consideration of this honorable Committee, if in such a case there should be a reasonable doubt, whether it will not be most delicate and safe to let that doubt operate in favor of the people. We are not here, sir, clothed with the full power of the American people; we are here in a circumscribed sphere, exercising a limited power. The people are the original fountain of all power; we only possess a part of their power. Bearing constantly this view of the subject in our minds, many questions put may be readily answered. As when it is asked, is the creature greater than its God? Cannot he who makes destroy? Has not one Legislature as much power as another? As to the two first, the idea is correct, when applied to the original power; it is correct or incorrect when applied to a limited power, according to the words and meaning of the instrument giving that power; the instrument giving power to Congress, has inhibited the power which has a right to create, from destroying, as in the case of the salary of the President, and the compensation of the judges; the President and Senate also have the power to appoint judges, but not to remove them, and the question is, does not the instrument giving power to Congress restrain them from taking away the office of a judge, as in the

above instance, giving a power to create and not to destroy? As to the question, has not one Legislature as much power as another? I answer yes; both deriving their power from the same instrument must be precisely the same; but this proves nothing till it is shown that any Legislature can take away the office of a judge. Many other ideas advanced on this subject are predicated upon the supposed abuse of power, and strike at the very existence of written constitutions, and tend to show the impracticability of being governed under them. Suppose one Legislature was to create a million of judges, who is to correct the evil? Is it possible, it is asked, that another Legislature should not have power instantly to correct the shameful abuse of the people's right? Suppose, on the other hand, that a Legislature, previous to the President's election, should raise his salary to a million a year, will it be contended that the next Legislature, agreeably to the Constitution, could decrease the salary? It will not; and why not have the power in one case as well as in the other? There are many cases under our Constitution, where the people run the risk of the abuse of power, and have retained the power of correction in their own hands: and what is the plain remedy for an evil in the present case, if it should exist? If the number of your judges is a little too great, declare that vacancies shall not be filled; if they become corrupted, impeach them; if, by any uncommon event in the circumstances of the country, or the wickedness of the Legislature, the number should be extravagantly great and useless, put them down by changing that part of the Constitution. And this, sir, is not a monstrously difficult thing. We have already had amendments to the Constitution, when the emergency was not so great. If an evil should grow out of any part of the Constitution, it can easily be removed by the hands of the people constitutionally raised; the judges are secure and not within the reach of a raging party, yet they must always remain within the reach of the cool reflection of the nation; and if the people will not agree to make this change, it will be a proof that the evil does not exist, and the great order of things ought not to be changed for mere imaginary complaints.

If Congress, in coming here, and carrying with them the sentiments of the people, and as their immediate representatives, can do everything which may appear to them for the good of the people, under every change of circumstances, a written Constitution would be useless. Upon this principle the Senate is unnecessary. The gentleman from North Carolina (Mr. HENDERSON) has properly dilated upon this view of the subject. Our Constitution is founded on different principles, and such ideas ought not to govern in putting a construction on it. The people have retained power to themselves, and have said to the Legislature, thus far shall you go and no farther. There are certain cases wherein you shall not be the judges of what will or will not be for our advantage. We have fixed the principle, and have taken the responsibility upon ourselves—on this reserved ground you are not to walk. One of the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

great and leading principles agreed upon by the people, we contend, was the independence of the judges. They calculated that the great good flowing from this principle would far outweigh any apprehension of the abuse of this power in giving birth to too many or improper judges. If, Mr. Chairman, I have perfectly comprehended the arguments of our opponents, they all converge to one or other of two points: 1st. That the words in the Constitution refer exclusively to the Executive, and are meant to render the judges independent of him only; the second point, which is rather a subordinate one, operating in support of the first, is that the office of judge is created by law, and not by the Constitution; that it is a creature of the law, whose life and death is to proceed from the same hand. I will proceed to examine these two points, giving my hearty assent to the acknowledgment of our opponents, that it is dangerous to the liberties of the people to legislate upon constructive power.

As to the first point, I would ask on what part of the Constitution is this opinion founded? where is it so expressed? If there had been an express provision that the Executive might remove officers at pleasure, there would be some weight in the argument, though far from being conclusive, that this clause was intended to prevent him from exercising a power in regard to the judges, which he was allowed to exercise as to all other officers. When nothing of this appears on the face of the Constitution, how can you infer it, for the purpose of making one implication assist you in making another? You make words, which are general, apply to a part; by implication, you say that the power that has a right to create has a right to destroy, if not prohibited. By this rule the Executive can remove all officers of his own appointment. By the same rule of implication, Congress can abolish all officers of their own creating, if there is no restriction. In this way the Executive and Congress have each of them the office in their power; the Executive can remove the man, Congress can remove the office, then comes in a general clause of the restriction, including both the man and the office, and to whom is it to refer? If words are the signs of ideas, to both most inevitably; and, besides, as a proof that it does not refer exclusively to the Executive, he is not named in the section; yet Congress are named, and acts to be done by Congress run all through it. In the first section of the third article, it is declared that "a judge shall hold his office during good behaviour." The office is an object of Legislative creation, and the thing thus to be created by the Legislature the judge is to hold for a certain time. If the object is to prevent the Executive from taking away the officer, leaving the office, a correct expression of that intention would have been, that the judges shall not be removed from office; and these words are used in the affirmative, when the officer and the office are to be separated, and the office left. [Here Mr. HENRILL read from the Constitution third section first article, No. 7, 1st section second article, No. 6, and fourth section second article.] But when the of-

fice and the officer are inseparable for a certain time, different words are used. The President shall hold his office during the term of four years; the judge shall hold his office during good behaviour. The tenure of office in each case is included in the same words.

As to the other point, that it is an office created by law, and not by the Constitution, and therefore may be removed by a law, let this principle be tested by the Constitution itself, and not from anything out of it. I aver, that in every instance where the Constitution has spoken of the continuance of any one thing, although the creation of the particular object is optional with Congress, yet the moment they give it existence it is out of their power, and must continue during the time mentioned in the Constitution. Apply this principle first to the salary of the Executive and judges. The salaries are created by law, and when created, their continuance is fixed by the Constitution. Apply the principle to the members of this House. When the bill fixing the ratio of representation was before us, could we have fixed a ratio decreasing the present number of representatives, and have made the law take effect immediately, and thereby disqualified members now on the floor from taking their seats next session, when they had been elected for two years? Yet their right to seats here was created by a law which was discretionary as to the number. Apply the principle to the Senators. New States may be admitted by Congress into the Union; yet when the new States shall have been admitted, and two Senators chosen in consequence of the law, can Congress repeal the law, dismember the Union in part, and turn out the Senators? The right of citizenship also is acquired by a law; yet when strangers have become members of our nation, in virtue of a law, can Congress repeal that law, and thereby disfranchise a part of her citizens? Yet in both of these cases it might be said that they were the throes of a dying Administration to provide for its friends. The law also fixing the permanent seat of Government, agreeably to the Constitution, seems to afford an analogous case, and I question if it could be repealed, unless words mean anything, and then Congress can do anything.

To come to a right understanding of the Constitution, it will be necessary to inquire what was the generally received opinion about the time the Constitution was adopted. I have ever understood that there was no difference of opinion on this point; that the general opinion was, that the words in the Constitution rendered the judges independent of both the other branches of the Government. This appears from the debates in the Convention in Virginia to have been their opinion; it appears, also, from the strongest implication, to have been the opinion of the author of the Notes on Virginia. If we can receive no aid from any of these sources, we must take up the Constitution, and apply to it the general rules for the interpretation of solemn instruments of writing. If in this instrument we find one express and positive provision, it must have its full force, unless we

find another provision equally positive, and so inconsistent, that one or the other must give way. In the Constitution we find these words: "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour," without any other condition or qualification; take these words detached from any other part of the Constitution, and I ask, do they not contain an express and positive provision? If so, what part of the Constitution is so inconsistent as to change the nature of this provision from a positive into a conditional one, and, in substance, to add these words, viz: "on this condition, that Congress permit the office so long to remain." It is said, in the eighth section of the first article, that "Congress shall have power to constitute tribunals inferior to the Supreme Court." This power was necessary to be given, otherwise the tribunals could not have been constituted, and when constituted, the duration of the office is limited in another part of the Constitution; and any implied power therein contained cannot be inconsistent with an express provision; for a mere implication is never to take preference to a positive provision. The other words relied upon are contained in the first section of the third article. What is the meaning of the words, *from time to time*? They are used but in three parts of the Constitution, and when used they do not convey the idea of undoing what may be done. Indeed, they are used in cases where it is impracticable to undo what shall have been done. [Mr. H. here read the fifth section, first article, No. 3; ninth section, first article, No. 6; and the third section, second article.] What do these words mean in that part of the Constitution under this discussion? The Supreme Court had been mentioned in the second and third article; the Supreme Court, which implies that there should be but one. They were not used to give Congress power to constitute inferior courts, for that power had been previously given, and if the inferior courts, together with the offices of the judges, are, as is contended, subjects of ordinary legislation, those words were unnecessary to enlarge the power of Congress on them, for on all subjects of ordinary legislation, Congress have an unquestionable right to enact and repeal at pleasure. It is not said in the eighth section, first article, that Congress shall have power to borrow money from time to time, to regulate commerce from time to time, or to establish post offices and post roads from time to time; yet nobody doubts that Congress have a right to make and repeal laws on these subjects, when it may appear expedient; and the same power would have extended to the clause giving power to constitute inferior tribunals, if there had been no restriction in any other part of the Constitution. As these words are unnecessary to give the power contended for, they must have some other meaning. The plain meaning is this: that these words, together with the first part of the section, were not used to give a power to constitute courts, for that power had been previously given; they were merely introduced to dispose of the Judiciary power, and to declare where it

should reside. "The Judiciary power of the United States shall be vested in the Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish;" meaning the power before given, which was discretionary as to number; the clause in the eighth section of the first article is brought here into view, and in the very next sentence the offices are positively fixed and limited. Here, then, is an express and positive provision, uncontradicted by any express declaration, or by any violent implication. It is said, that there are words of negation used as to the compensation of the judges, and why not to the offices? If the words had been: and shall at stated times receive for their services a compensation during their continuance in office—will any man in his senses say that the compensation could be taken away during that continuance? Yet, although the compensation could not be taken away, it might be lessened, and the words of negation were to prevent that diminution; but as the legal signification of an office could not be lessened, the words there would have been surplusage.

But, Mr. Chairman, is it probable that the framers of the Constitution ever intended to invest Congress with a power to destroy the office of a judge, in a rising country like this, where all the various sources of litigation are daily increasing? They foresaw that new judges would be wanted from time to time, but they never could have pictured to themselves a necessity of dispensing with the old judges. If we were framing a Constitution this moment, if we had any regard for the independence of the judges, would we invest Congress with a power to remove them, or take away the offices? We could calculate with reasonable certainty, that if there should at any time be a necessity for their appointment, there would always in this country be a necessity for their continuance; and we could trust this power to one Legislature as confidently as to another. If the framers of the Constitution could have entertained any suspicion that a Legislature, in 1801, would have created useless judges for party purposes, with equal propriety they might have supposed that a Legislature, in 1802, would destroy useful judges for party purposes. But the independence of the Judicial department was the object. This was the invaluable principle, and not more liable to abuse than the other principles fixed by the Constitution, and there was no principle so necessary to be settled as the independence of the judges. If we are to argue from the abuse of power, what is there to prevent Congress from admitting into the Union more new States than would be for the advantage of the nation? The late Administration, with the consent of the Legislature of Massachusetts, might have erected the province of Maine into fifteen or twenty States. The fact is, if there is a necessity for a new State, at the time of its admission into the Union, the probability is, there will always be a necessity. So, if there is a necessity of a judge at the time of his appointment, the probability is that there will always be a necessity, and the Legislature

FEBRUARY, 1802.

Judiciary System.

H. OF R.

giving birth to one or the other, are the Constitutional judges of that necessity, and no other Legislature has a right to interfere. My opinion is, that the framers of the Constitution intended that the judges should be independent of both the other branches of Government; that they have spoken plainly and unequivocally; and that the moment that the judge is appointed, the office is ingrafted in, and becomes a part of the Constitution, and cannot be taken away without impairing the Constitution itself.

With regard, Mr. Chairman, to the distinction that is taken between the supreme and inferior courts, for my own part I cannot see any force in the argument. Any person of common candor must acknowledge, when he reads the first section and second section of the third articles that there is as imperative an injunction to establish some inferior courts, as there is to establish one supreme court. It is said that the Supreme Court shall have appellate jurisdiction, and of course there must be inferior courts, from which the appeals are to be made, and the duration of office in both courts is contained in the same sentence and words; and it is absurd to suppose that the framers of the Constitution affixed a double meaning to these words. The reasons urged against our construction, apply as well to the Supreme Court as to the inferior courts. A dying Administration could provide for its friends by increasing the number of judges in the Supreme Court, with as much facility as by creating inferior tribunals. But, sir, if Congress have the power contended for, there is not a judge on the supreme bench who is not completely in their power. The Constitution does not say how many judges there shall be, so that you may remove all but one, or you may pass a law placing six new judges on the bench, by the side of the present judges, and then, for the good of the people, conclude that twelve judges are unnecessary, and repeal the law which created the first six judges, and the imperative words in the Constitution will be complied with; the Supreme Court being always in existence. I see nothing in the Constitution which prohibits Congress from changing the name of an inferior court, if by the same act the office with all that appertains to it is some where preserved. And that Congress have a right to transfer some of the duties of the judges from one tribunal to another, is clear and evident; it is incident to the power of constituting new tribunals; for when a new court is created, some of the business which would have been cognizable in the old court, must be transferred to the new tribunal. It was this kind of power that Congress exercised in passing the law last session; but they did not touch the office, which consists in certain powers, jurisdiction, and authority, conferred on a particular person, requiring of him certain duties which may be exercised in a court bearing a different name from that of the judge. Under the old system the district judges sat in the circuit courts, the supreme judges sat in the circuit courts; and under the old system the district judges of Kentucky and Tennessee had the powers cognizable in a circuit court,

with some exceptions as to appeals and writs of error; and the twenty-fourth section of the law of February 13, 1801, which abolishes the two district courts; transferred the Constitutional parts of the offices, to wit: all the power, authority, and jurisdiction of the said courts into the circuit courts; and by the seventh section of the same law, the district judges of Tennessee and Kentucky, with a circuit judge, are to hold the circuit courts; and in the same section it is expressly declared, that when the offices of the district judges, in the districts of Kentucky and Tennessee respectively, shall become vacant, such vacancies shall be supplied by the appointment of two additional circuit judges, which appointments, of course, must be made in the usual way. And in the third section of the same law, Congress have virtually acknowledged their want of power to take away the office of a judge, and have provided, that after the next vacancy in the Supreme Court, it shall consist of five justices only. And as to the additional salaries of the district judges, they will be presumed to be equal to the additional duties, until a complaint is made, and then the fact must be ascertained.

This law, then, Mr. Chairman, which expressly recognises the judge, which expressly continues his duties, and which expressly continues his salary, is likened to a law which destroys the office of a judge, takes away his duty, takes away his salary, and leaves his commission a blank piece of paper; and this is the rock on which gentlemen stand, when they triumphantly ask, were we the guardians of the Constitution when the first law passed?

Mr. Chairman, ingenuity has been exhausted in contriving cases wherein it is said our construction will not hold good. It is asked if, in the case of a war, a whole State should be ceded, if the offices of judges would remain? Certainly not; but here the provision of the Constitution would not be complied with, the whole strength of the nation would not be sufficient to protect it; yet it would be a case of necessity, calamity, or war, which no Constitution can provide against; and, in the case put, the most important part of the Constitution would not be complied with, which guaranties to each State in the Union a Republican form of Government; yet in that event the people of the ceded State might become the slaves of a tyrant.

But, Mr. Chairman, a doctrine new and dangerous has begun to unfold itself. It is said that the Judiciary is a subordinate and not a co-ordinate branch of the Government, that the judges have no right to declare a law to be unconstitutional; that no such power is given to that branch in the Constitution. Why, sir, it is nowhere declared that Congress have a right to exercise their judgment, or to consider the expediency of a measure; the Judiciary, from the nature of their institution, are to judge of the law and what is the law. The Constitution is paramount and supreme. The judge is bound by oath to support it. The Legislature have a right to exercise their judgment as to the constitutionality of a law on

its passage; but the Judiciary decide at last, and their decision is final. This doctrine is admitted in the debates of the Convention of Virginia—in the case of *Vanhorne, lessee, vs. Dorrance*. Judge Patterson has expressed the same opinion, when he could have had no view to this question:

"I hold it to be a position equally clear and sound, that in such a case, it will be the duty of the court to adhere to the Constitution and to declare the act null and void. It is an important principle, which, in the discussion of questions of this kind, ought never to be lost sight of, that the Judiciary in this country is not a subordinate, but co-ordinate branch of the Government."

The Chief Magistrate of Pennsylvania has recently expressed the same sentiment, and the correctness of his legal opinions will not be called in question by any party; in assigning his reasons for not approving a law, he says:

"And I cannot, from a confidence in the legal knowledge, integrity, and fortitude of my former brethren in the Supreme Court, risk my character in a Judicial decision on this question, when I do not foresee any advantage to be derived to my country, from a possibility of success."

But, sir, if it is once established that the Judiciary is a subordinate and dependent branch of the Government, I acknowledge that they have no right to judge of the constitutionality of a law, or, if they have the power, they will be afraid to exercise it. Upon this principle, where will an influential partisan and an insignificant individual meet to adjust their claims? In this House, or in a tribunal under the influence of this House? Where will the powerful State of Virginia and the State of Delaware meet upon terms of equality; in this House, or in a tribunal under the immediate control of this House? Where could the Federal administration of justice in this country be deposited with more safety than where it is? Intrenched as our judges are, they can do but little harm, but much good; from their situation they can have no temptation to make inroads upon the rights of the people; there is no such thing as Judicial patronage; they can appoint no officers, collect no moneys, raise no armies, raise no fleets. They have nothing but their virtue and talents to recommend them to the people. If it is within the power of human contrivance to select a spot where the streams of justice will flow pure and uncontaminated, it is in a tribunal of independent judges.

The three grand branches of our Government are well arranged. The President has his proportionate weight in the Judiciary, by appointing the judges; when they are appointed they are independent, and in this situation are to guard the Legislature from making encroachments on the liberties of the people. The Legislature, in turn, have a check on them by bringing them to trial and punishment, if they should become corrupted; this trial is to commence in this House, which will always be a repository of a sufficiency of passion and spirit to commence the impeachment, if there is a reasonable cause; the trial is to be ended in the Senate, where the members, from

their permanency, will be likely to be cool, and not convict unless they are guilty. Thus the parts are interwoven, operating as checks and controls on each other; but once cut the ligament, and perhaps the dreadful consequences have not been too highly colored. The effect may not be immediate, but let the principle be practised upon by two or three changes of administration, and it will become as much a matter of course to remove the judges as the heads of departments, and in bad times the judges would be no better than a sword in the hands of a party, to put out of the way great and obnoxious characters for pretended treasons.

The independence of the judges was a great point gained by the people of England. While the tenure of office depended on the nod of the Crown, they supported the arbitrary measures of the King; in one instance they decided that the King had a right to levy ship-money, without the consent of Parliament or people; and many an instance might be brought to the recollection of this honorable Committee, where they determined through fear, and not from judgment. It is said they are not independent of Parliament. Why, sir, nothing is independent of Parliament; and there is not the same necessity there. There being no written constitution in England, the Judiciary forms no check upon Parliament; and, besides, our Government is not a copy of the British Government; and this is not the only solitary instance where we have outstripped, as it is called, our too favorite prototype. There is not a leading feature in the Constitution that bears testimony of any servile imitation; it is our opponents who wish to test our Constitution by the principles of the British Government; it is they who wish that a construction be put upon the Constitution by Congress, which shall be considered as the Constitution itself; and are unwilling that there should be any check to oppose it; and of course, every construction put on it by the different Legislatures, will exhibit the appearance of a new Constitution, a constitution to be tossed and blown about by every political breeze. The powers of Congress will be equal to the powers of the English Parliament, transcendant, splendid, and without control. I little expected that such lordly power would be grasped at by our plain Republicans, who have no ambitious desires, and who wish rulers to be contented with humble prerogatives.

Mr. Chairman, when I reflect upon the intrinsic nature of the question, I am confounded and amazed; it is vast indeed—from a dread of its terrible consequences. Yet, in its nature, it consists in the open denial of the obvious meaning of a few words in the Constitution; we repeat these words, gentlemen deny their plain sense. We read "That the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." Our opponents say that these words do not mean "that the judges both of the supreme and inferior courts shall hold their offices during good behaviour." The meaning of these words is entirely different; it is, in fact, the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

reverse; they do not infringe our power; they refer to the Executive; although the office to be holden is not of Executive creation, and he can neither make it nor destroy it: the thing to be holden during good behaviour, is an object of Legislative creation. Certainly our opponents cannot drive us out of the firm ground on which we stand, and tell us that these words are not in the Constitution. They are, and how are they to be got rid of? No other way, under Heaven, Mr. Chairman, than by a bold and arbitrary assertion that they do not bear their natural meaning; that they do not bear the same meaning which they bear in another part of the Constitution. The people have said that a judge shall *hold* his office until a certain event shall happen; the rulers say no, we will shorten the period, and this is not breaking the Constitution; or, in other words, the people have said that a judge shall hold his *office* during good behaviour; the rulers say, the meaning of that is, that the office can be taken away at any moment. Why, sir, what part of the Constitution will hold gentlemen? what words are in it that are strong enough, and what meaning cannot be as easily distorted and perverted? We have a right to our seats here for two years, if we do not behave disorderly; yet it might as well be said that the meaning of that is, that two-thirds can expel the other third at any moment, notwithstanding their good behaviour. Our opponents complain of the want of power; that their power would be too much cramped and restrained from its natural freedom by our construction. Why, sir, that is the object of a written Constitution, to place objects out of the reach of legislative power. It is its great and grand design.

I ask pardon of the Committee for detaining them so long. I ascribe no wicked motives to our opponents. I have the charity to believe that their motives are good and virtuous; yet I am confident, that through a mistaken zeal for the good of the people, they are going too far, and are destroying the Constitution of our country.

The further consideration of the said bill was postponed till to-morrow.

WEDNESDAY, February 17.

A representation of sundry counsellors at law, practising in the Courts of the State of New Jersey, and in the Circuit Court of the United States for the District of New Jersey, was presented to the House and read, praying that the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States," may not be repealed, for the reasons specified in the said representation.—Referred to the Committee of the whole House to whom was committed, on the fourth instant, the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Ordered, That Mr. DENNIS be added to the committee appointed, on the ninth instant, to prepare

7th CON.—18

and bring in a bill or bills "for opening a navigable canal to connect the waters of Potomac river with those of the Eastern Branch thereof, through Tiber Creek, and the low lands at the foot of the Capitol Hill," in the room of Mr. SPRIGG, who resigned his seat in the House on the eleventh instant.

On motion, it was

Ordered, That Mr. BRENT be excused from serving on the committee appointed, on the eighth of December last, "to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, and to report by bill, or otherwise;" and that Mr. CAMPBELL be appointed of the said committee in his stead.

A Message was received from the President of the United States, transmitting the report of the Director of the Mint. The said Message, and the report referred to therein, were read, and ordered to lie on the table.

Another Message was received from the President of the United States, transmitting a statement of the expenses incurred by the United States in their transactions with the Barbary Powers, and a roll of the persons having office or employment under the United States. The Message was read, and, together with the documents accompanying the same, ordered to lie on the table.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. THOMPSON.—I find the opinions I entertain, so extremely adverse to the sentiments yesterday expressed on this subject by the honorable gentleman from North Carolina, (Mr. HENDERSON,) who opened this debate, and the honorable gentleman from Pennsylvania, (Mr. HEMPHILL,) whose great ingenuity I feel pleasure in acknowledging, that I feel myself impelled to offer to the consideration of the Committee a few observations in reply to the arguments used by those gentlemen. But, Mr. Chairman, while I pay the tribute of my respect to the eloquence and ability which the gentleman from North Carolina has displayed in the discussion of this subject, I must pray that honorable gentleman to pardon me when I declare myself unable to follow him, when, soaring on fancy's airy pinion, he transported us across the Atlantic, and presented to our view, in the most vivid colors which language can portray, the spirit of innovation, sweeping morality and good order from the earth. Nor will I pretend, sir, that my humble genius will enable me to pursue him, when he forced this same spirit of innovation to mount the whirlwind and lash on the storm. But, sir, with such talents as I am endowed with, I have no objection to going into the consideration of the question before the Committee, and pursuing the order which the gentleman has had the goodness to suggest, as the most natural into which the subject can be divided—that

is, 1st. The power of the Legislature to pass, and 2dly, The expediency, under the existing state of things, of passing the bill now upon your table.

Under these two heads, I will endeavor to meet, as far as I shall be able to recollect them, the most impressive arguments which have been used by the gentlemen; and I will beg leave in the first place to call the attention of the Committee to the eighth section of the first article of the Constitution, which has been very slightly touched on by the gentleman from North Carolina, and which has been attended to, with much ingenuity, by the gentleman from Pennsylvania. By this section the Legislative powers of Congress are defined. "Congress shall have power," says the Constitution, "to levy taxes, to borrow money, to coin money," and, among a variety of other powers, "to constitute tribunals inferior to the Supreme Court." It is an axiom in politics that an ordaining power always embraces a repealing power; if Congress have a right to constitute courts, they have the right to modify and to annul the courts so constituted; this, like various others, is merely a discretionary power, to be exercised, or not exercised, as Congress shall find conducive to the public welfare; the granting a power does not oblige the exercise of that power; neither does the exercise of power make the laws resulting from that Constitutional exercise of power unchangeable and irrepealable. The same Constitution, giving this power, gives various other powers, as I have already shown; yet it has never been contended that the laws passed under these conceded powers are irrepealable. Still, by a parity of reason, and with a reference to this particular section of the Constitution, if the laws relating to the Judiciary establishment of the United States are irrepealable, so must the various laws passed under these granted powers, relating to your revenue, to your army, to your navy, to your mint, be irrepealable. But every gentleman knows that laws resulting from these powers have been passed, have been modified, and have been repealed; and so likewise has the law establishing the Judiciary system. Without carrying you through the tedious detail of the twenty-six or twenty-seven laws which have been passed upon this subject, it will be quite sufficient for my purpose to notice the law of the last session of Congress, the 27th section of which begins with these words:

"And be it further enacted, That the circuit court of the United States heretofore established shall cease and be abolished."

We travel not then in a wilderness, Mr. Chairman, untrodden by human footsteps; our immediate predecessors, it appears to me, are the pioneers who point out to us the path we should pursue for the benefit of our constituents. They have not only abolished the circuit courts, but reorganized the whole system; they have constituted new courts and new judges, and they have lessened the duties of the judges of the supreme courts. To say that a subsequent Legislature have not a right to repeal a law of a precedent Legislature is to proclaim such precedent Legislature infalli-

ble—that they are more just, more wise, more competent to the exercise of their functions, than any Legislature which shall follow them. It is a contradiction of the progress of knowledge, and of the improvements which may result from experience; it is a denial of the utility of frequent elections; because that Legislature which had attained the acme of perfection ought to be permanent and unchangeable. The law, however, of the last session, which I have just now cited, having modified the courts of the United States, concedes the power of modification to be in the Legislature. But, sir, even this concession, such as it is, is now, by the arguments of gentlemen, so clogged with appendages, so qualified by expositions, that whilst with one breath the power of modification is admitted, with the very next that power is unnerved, is rendered useless; for, says the gentleman from North Carolina, a department of the Government has been erected, called the Judiciary, not holding their office during pleasure, but during good behaviour, and whatever power attempts to deprive them of their offices violates the Constitution. It is admitted, then, that Congress have power to modify the law; but it is denied that they have power to abolish the offices of the judges.

Let us then inquire, Mr. Chairman, by what tenure the judges hold their offices: "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour."—*Constitution, article 3, section 1.* The gentleman from North Carolina inquires, If they have been guilty of any misdemeanor? How, then, are we to break down this Constitutional rampart with which they are entrenched? How, to use the gentleman's own expression, are the judges to be hurled from their offices? There is no gentleman, Mr. Chairman, within these walls, who would more sincerely wish the Judiciary to possess a due and proper independence than myself; but although I do not admit the right of the Legislature to hurl these judges from their offices, yet I must contend and shall ever contend for the right which Congress possesses to abolish an office; or, in other words, to repeal a law creating an office, whenever it shall be plainly proved to them that such an office is unnecessary and oppressive. They may hold their offices during good behaviour, if their offices exist; but most certainly the moment the office is legally destroyed—that is, the moment the law establishing the office is repealed, there must be an end of the tenure. Those sages who formed the Constitution, Mr. Chairman, never contemplated a privileged order of men in that society for whose happiness they formed that instrument. The exposition, which is now given to it, is very different indeed from that which was intended by them. I have read, and have heard, sir, that this is a Government of experiment. That in the annals of nations it has no likeness—no prototype. The effects of this particular department of the Government were not better understood than the effects of the other departments of the Government; it was to be tested by experience, the touchstone of truth; if

FEBRUARY, 1802.

Judiciary System.

H. OF R.

one system in its operation did not answer the expectation of the Legislature, ample room was allowed for the introduction of some other, and for the abolition of the former; hence come the expressions "from time to time ordain and establish." What says the Constitution? "The Judicial power of the United States shall be vested in one Supreme Court, and such inferior courts, as Congress shall from time to time ordain and establish." Congress may, then, or Congress may not from time to time ordain and establish courts. But, if they establish courts, so likewise may they abolish courts. Into what a variety of absurdities shall we be plunged, if we reject this reasonable interpretation? The right to modify the law being conceded, but not the right to deprive the judges of their offices, our country would exhibit a spectacle which it never has yet, and I hope never will exhibit—officers without offices—judges without courts—a privileged order—out of the reach of the Constitution, (for being deprived of their offices they cannot be impeached,) drawing money from the Treasury and rendering no services for their salaries. Is this the meaning of that Constitution which declares, that "The judges during their continuance in office shall receive a compensation for their services?" A compensation?

But suppose, Mr. Chairman, they perform no service—suppose there be no service for them to perform, what, then, is to be their compensation? Will the judge say to the Legislature, increase my duties, make them proportionate to my salary, and I will perform them? Not so, Mr. Chairman; an increase of salary is never objected to; a diminution of duty is never objected to; but, if duties are increased, salaries must also be increased. If I understand the word "compensation," it signifies a something given for a something performed. But, if there be no duty performed (and if there be no office there can be no duty) then there ought to be no compensation. In the English language there is such a word as "sinecure." This is a word, Mr. Chairman, which as yet we do not practically understand. This is a word abhorrent to the spirit of our Constitution. Yet, sir, if the construction of the Constitution, which is now contended for, be admitted, this will be a word which we shall soon practically feel, and practically understand. We shall have a set of men receiving the public treasures not in consideration of public services, but without any services whatever being performed; or, in other words, we shall lay the foundation of a sinecure system, the consequences of which will be incalculable, and the effects of which will be indescribably destructive.

But, Mr. Chairman, I will show you a precedent, and a recent one, too, where the Legislature put a different construction upon the Constitution; I will show you a precedent where a Federal Congress, our immediate predecessors, did not hesitate to exercise the powers we contend for. By the 27th section of the law of the last session, which I have had occasion before to advert to, the circuit courts are abolished. Then that Con-

gress not only thought themselves justifiable in touching the judges of the inferior courts, but of the Supreme Court likewise; for you will find that the same law which constituted the Supreme Court, allotted to the judges of that court, particular and express duties or offices—that is, to perform the duties of a judge of the Supreme Court, as is in that law defined, and to perform the duties of judges of the circuit court, as is likewise defined in that law; and in abolishing the circuit courts, half the offices of the judges of the Supreme Court were abolished.

Perhaps, Mr. Chairman, that Congress had as great a right to abolish the whole office as half the office; but whether that was an infraction of the Constitution, or whether it would be an infraction of the Constitution to abolish the office of a judge of the Supreme Court, I will not detain you to inquire, because it appears to bear but little upon the immediate subject before us, it not being the intention of the bill, as I understand it, to interfere with the offices of the judges of the Supreme Court, further than to restore them to that firm, that rightful, that Constitutional ground, on which they stood previously to the passage of the law of the last session, and to all the duties and immunities of which I most sincerely wish to see them restored.

But, Mr. Chairman, the gentleman from Pennsylvania has informed us, it is acknowledged that the law of the last session is Constitutional; in this I can by no means agree with that gentleman. There is one section in that law, sir, which in my humble opinion is a flagrant violation of the Constitution. By the 24th section of that law the district courts of Kentucky and Tennessee are abolished. Had our predecessors stopped at this point, we should have no cause on this day to charge them with a violation of their charter, they would have done no more in principle than we now contend we have a right to do. But they went further—they usurped a power in my opinion not given them by the Constitution, they usurped a power exclusively vested in the President and Senate. By the seventh section of the same law, the judges of the district courts of Kentucky and Tennessee are appointed circuit judges in fact, not indeed in name, but in reality the duties of circuit judges of the sixth circuit are assigned them. The district courts of Kentucky and Tennessee are abolished, and I wish to be informed if they are not circuit judges to all intents and purposes, and I wish further to be informed, if they are not circuit judges appointed by the Legislature, and in direct violation of that article of the Constitution, which has, in the most express terms, vested this power in the President and Senate? Sir, did I apprehend the gentleman from Pennsylvania aright, when I understood him to say, the name of a judge does not define or constitute the duty of a judge?

This is indeed a melancholy exemplification. Shall I be told that by the law they are styled district judges? How long, Mr. Chairman, are we to be imposed on by sound, how long are we to be entangled with the cobwebs of sophistry? But

H. OF R.

Judiciary System.

FEBRUARY, 1802.

sir, the gentleman from North Carolina has warned us, solemnly warned us, against a violation of the Constitution. Was that gentlemen a member of this House when the law which I have just been speaking of, passed? I perceive by your journals that he was—why then, sir, were not these sensations, which he now experiences with such exquisite sensibility, awakened? Why were they not awakened a year ago, when he might perhaps have prevented an actual violation of the Constitution? I ask the honorable gentleman, sir, when with a sacrilegious hand this vital wound was inflicted on the Constitution, if he raised the plaintive cry of—Spare, oh! spare the Constitution of my country? Yesterday, sir, the gentleman informed us if the bill on your table should pass he would heave no sigh, he would drop no tear over the expiring Constitution. When that law passed, did he heave no sigh, did he drop no tear? Oh, no, sir, very different was the course which was then pursued. With cool, with cruel deliberation, the devoted victim was immolated, and the blood which issued from the gaping wound will forever stain the pages of your statute book.

Mr. Chairman, the expediency of the law now under consideration, and the propriety of adopting a measure of this nature, at the present time, have been so fully and so satisfactorily discussed in the Senate, not many days ago, that to this point I shall apply but few observations. Coming from a State where justice is administered with promptness and frugality, I confess that the stupendous fabric of the Federal Judiciary excites my astonishment. I had, sir, supposed, that the document, which has been furnished by the Executive, would be a full and complete answer to anything that could be said on this division of the subject; but, sir, the gentleman from Pennsylvania has informed us that if the undecided causes of the State of Maryland were added, the aggregate number of depending causes in the courts of the United States would probably amount to sixteen hundred, and he inquires if it is practicable for the courts, after the repeal of the law of the last session, to determine this number of causes scattered over the United States? Sir, when I cast my eyes across the Potomac, and call to recollection the system of jurisprudence established in my country, I cannot hesitate a moment in giving him an affirmative answer.

I have not, Mr. Chairman, nor was it possible for me to procure, documents from the district courts of my State to show to the Committee the number of suits which are depending in them. But, sir, when I reflect how often I have seen a venerable citizen of that State, respectable for his great learning, respectable for his irreproachable life, and respectable for his years, (being aged I believe, full seventy,) who is judge of the high court of chancery there, devoting his days and his nights to the avocations of his office, in the plain garb of a common citizen, dispensing justice and satisfaction to the multitude of citizens whose causes are tried before his tribunal; when I reflect on the number of citizens whose causes are tried before his tribunal; when I reflect on the

number of decisions which are made in his court in the course of a year; and when I overlook a document which I have now in my possession from the clerk of that court, and which I shall presently offer to the view of this Committee, I can have no difficulty in pronouncing the sincere opinion which I entertain that he performs more duty, and perhaps with greater ability, than the whole judicial corps of the United States. [Mr. T. here read the document.]

And what, Mr. Chairman, is the compensation which this venerable citizen receives? Fifteen hundred dollars—no more; compare this with the sum which supports and decorates the fair composite column which we are informed is one of the strong pillars of our Government; and to touch which we are told will occasion the beautiful fabric to tumble in the dust. Have we not State courts diffused in abundance over every commonwealth composing this Union? Are they not competent to the decision of all cases of controversy between citizen and citizen? Is not the jurisdiction of the Federal court extremely limited from the true and genuine construction of the Constitution? Where then was the necessity of the law of the last session which ramified and increased these courts? But, sir, the gentleman from North Carolina has found another use for them; he has told us, “the people, when they established this Constitution did not delegate the power of legislation to the House of Representatives alone. They established the Senate as a check upon the House of Representatives; knowing the violent impulses which often actuate popular assemblies, they gave the President, too, the power to negative laws. When a law had passed these various branches of the Government, it became necessary to erect a third department, called the Judiciary, not holding their offices during pleasure, but ‘during good behaviour.’” Did I comprehend the argument of gentlemen when I supposed it went to the establishment of this department as a check upon the Legislature, and did I comprehend the argument of the gentleman from Pennsylvania, when he cited Judge Paterson’s charge, which I have not seen, but from which, as he read, I noted these words “I hold it to be the duty of the court in such case, to declare the law null and void.” If I have not misunderstood the gentleman, I confess my eyes are now opened. I begin to feel some of those apprehensions which have been so strongly talked about, and which heretofore I have not been accustomed to experience. Not, sir, from a fear of usurpation of power on the part of the Legislature, for they are biennially responsible to their constituents for the sacred observance of the charter of their rights; not, sir, from a fear of usurpation of power on the part of the Executive, for the term of his service is limited to four years, and therefore he is liable to lose his office in case of an infraction of the Constitution on his part, but from a desire which, I fear, this check-department of the Government has to grasp at all power. Give the Judiciary this check upon the Legislature, allow them the power to declare your laws null and

FEBRUARY, 1802.

Judiciary System.

H. OF R.

void; allow the common law, a system extending to all persons and to all things, to be attached to the Constitution, as I understand it is contended; and in vain have the people placed you upon this floor to legislate; your laws will be nullified, your proceedings will be checked. As long as the office exists the judge holds it during good behaviour; he is, then, independent. Being independent, and not having that degree of responsibility attached to his office which is attached to the Legislature or to the Executive, the powers granted by the Constitution are to be strictly construed; nothing is to be left to implication; nothing to construction; the letter is to determine the extent of their power, and I conceive it never was intended they should transcend it. I have, sir, looked into the Constitution with a scrutinizing eye, to discern, if possible, whence these pretensions are derived. There are but two clauses of the Constitution, which can even give a pretence for the power which is contended for. The first is as follows:

“The Judicial power of the United States shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.”

To declare a law null and void is certainly not such a case, either in law or equity, arising under the Constitution, as was contemplated to be embraced by the paragraph I have cited. It will be in vain to say that, without such a construction, the Constitution cannot be satisfied. I am not now to learn that there are two descriptions of cases which will be fully sufficient to satisfy the terms there expressed, in their utmost extent, as where cases shall arise between citizens of different States, or between citizens and foreigners, which are to be decided either by State laws or by foreign laws; or where cases shall arise between citizens of the same State in consequence of an unconstitutional exercise of power on the part of the State, in emitting and making bills of credit a lawful tender. The other clause of the Constitution is as follows:

“This Constitution and the laws of the United States, which shall be made in pursuance thereof, &c., shall be the supreme law of the land, and the judges in every State shall be bound thereby.”

This, certainly, from the words with which it concludes, was intended as an instruction or direction to the judges of the State courts; and if they were transposed, perhaps, would more fully communicate the intention of their framers, reading in this form: “The judges in any State shall be bound by this Constitution,” &c. Is there any reasonable person, sir, after this explanation, will say that by either or both of these clauses a power is given to your Judiciary to declare your laws null and void? They may, to be sure, for a while impede the passage of a law, by a decision against its constitutionality; yet, notwithstanding the law is in force, is not nullified, and will be acted upon whenever there is a change of opinion. The Legislative, Executive, and Judicial departments should be kept separate and distinct. This I

agree to, it has become an axiom in politics that they should. Yet, I inquire, will this be the case if you allow to the Judiciary the power to annul your laws, and contend that the common law is attached to the Constitution? I am persuaded you thereby concentrate all power in one department. The common law is the Constitution, and the court may, if they please, declare it void.

But I have not heard it explained whether the common law simply, without statutory amendments, or the common law with statutory amendments, or with what statutory amendments, is to be attached to the Constitution? I believe it is intended they have a right to apply such parts of it as are applicable to the Constitution. The common law extends to all persons and all things. The judges have the right of adopting this law, or such parts as they may deem applicable; they can annul your laws. If these powers are really contended for on the part of the Judiciary, and if these powers should ever be conceded, they would without doubt possess an unlimited and uncontrollable power of legislation. I am free for my own part to declare, that I had rather live under the government of a lenient despot than such a government of judges. And if those powers are really contended for, I feel no hesitation in informing you, Mr. Chairman, that this is the tree where despotism lies concealed. And this, too, is the auspicious moment when those branches shall be pruned away, which of late have vegetated with extraordinary luxuriance. But, sir, nurture it with your treasure, stop not its ramifications, and suffer me seriously to inquire, What will be the consequence? It will overshadow your extensive Republic; your soil will become too sterile for the plant of liberty; your atmosphere will be contaminated with its poisonous effluvia, and your soaring eagle will fall dead at its root.

Mr. DAVIS.—Mr. Chairman, I beg leave to be indulged with a few remarks on this subject, which I shall submit with great diffidence, being sensible of my incompetency to illustrate a subject of such immense importance; but as I am to give a vote, the reasons that govern that vote I think it my duty to express. I rejoice that we are called upon to decide this great national question at a time when the public mind is calm and tranquil, when, uninfluenced by extrinsic circumstances, we can settle a principle of such magnitude to our country.

I did hope we should have taken up this subject with cool deliberation, and I have to lament that the honorable gentleman from North Carolina (Mr. HENDERSON) who opened the debate, instead of appealing to our sober reflections, sounded the trump of alarm. That honorable member told us we were about to prostrate the Constitution. If this really be the case, the sound of danger is proper, and we, who are about to do it, must expect to answer it to our country, and to generations yet unborn. But above all, we must expect to answer for it in a day of awful reckoning. The honorable member told us “that the spirit that had rode on the whirlwind and directed the storm—the spirit that had brought twenty millions of people

H. OF R.

Judiciary System.

FEBRUARY, 1802.

to bow to a single despot—had entered this House on the seventh day of December last, and with gigantic strides was bearing down all before it.” When the honorable member spoke of this tremendous spirit, I was at a loss how to understand him. I thought he alluded to a spirit that a few years ago threatened to humble my parent State in dust and ashes, because her citizens refused to sing praises to the late Administration, and own its superior wisdom and patriotism. But when the gentleman spoke of twenty millions of people, I found he alluded to the French nation. On a subject where the interest of the United States is alone concerned, and which furnishes matter for the most brilliant or diffusive genius, I wonder that gentlemen will not confine themselves to America, and not seek for occurrences among the transatlantic nations. But I ask that honorable member if he is now prepared to degrade that spirit so much approved by the Great Washington of America, that in addressing a late Minister of that nation, he spoke the following words: “To call your nation brave is but to pronounce common fame. Wonderful people!” Is he prepared to degrade a spirit that resisted the union of Kings and Emperors against an infant Republic? This, as well as other remarks, are foreign to the subject, but deserve to be considered. The honorable member then told us that everything that bore the majesty of the people was about to be destroyed. The excise, he says, pledged to pay the national debt, is to be repealed. Has that honorable member forgotten the agitations that this excise law cost the public? Has he forgotten that the prison of Philadelphia was filled with those who resisted the law? Has he forgotten that citizen was armed against citizen, and State against State, to enforce this law, and that it was carried into execution at the point of the bayonet? Does that gentleman think the majesty of the people consists in holding the law in one hand and the sword in the other, and ruling the nation with a rod of iron? The Mint, he says, is to be knocked down. Surely he does not remember that it cost us twenty-one thousand dollars per annum, and renders us no service. Does he think the majesty of the people consists in useless expensive establishments from which no good has, or ever will result?

The gentleman then reads the Constitution, and tells us the acceptance of the office of judge, is a contract between the Government and the individual who undertakes the office. The words on which he relies are, “the judges of the Supreme and inferior courts shall hold their offices during good behaviour,” hence he infers that the Government is obliged to continue the office to the judge as long as he behaves well, whether it has anything for him to do or not; and that to take the office from him is a violation of the contract and Constitution. Let me examine this principle and see to what it leads. If it be a contract, it is equally binding on the judge and Government; if the words “shall hold his office during good behaviour,” mean that the Government shall continue the office during that time, it must also mean

that the judge shall fill the office during that time, and that he cannot resign without first misbehaving, which is not correct; because we know that judges have resigned, and have been removed by more eligible appointments; neither of which could be done, if the principle be a sound one; for then the contract operates unequally, as the Government is bound to continue an office, and the judge is at liberty to vacate when he pleases. If therefore it is a contract between the judge and Government, to make it equal, the Government should have the right to abolish the office when it thought it expedient, and the judge the right to vacate it when he thought proper; and this I hold to be the proper ground. But I make a material distinction between removing a judge from office and abolishing the office; the first implies guilt, the latter that the office is useless, and abolishing it imports no blame to the judge. The office is created by act of law; the appointment to fill it is by Constitutional authority; to remove a judge without proper complaint would be wrong, but to abolish an office created by law, when found useless or inexpedient, would be proper. The gentleman reads further, “And shall receive for their services a compensation which shall not be diminished during their continuance in office.” It is worthy of remark, that the word compensation is not annexed to the word office, but is attached to the word services.

This evinces to my mind that the compensation is for services to be performed by the judges, and not for holding the office. Thus, when we abolish the office, we leave no services for him to perform; but he retains his commission, which we have no power to wrest from him, and the latter words go to prove it, “shall not be diminished during their continuance in office.” The word compensation being attached to the word service, to complete the right to compensation, there must be an office of judge, and services rendered in that office. When this law we are about to repeal passed, this seems to have been the opinion of those who passed it. For by a Legislative act they abolished the district courts in Tennessee and Kentucky, and created circuit courts in their stead, and directed the judges of the district courts to perform circuit court services. Where, let me ask, is the difference between our abolishing courts and a former majority doing it? This I take to be the only difference, we abolish courts and do not order judges to do services in other courts. The last Congress abolished courts and then seized the power confided by the Constitution to the President and Senate, namely, the appointment of judges in certain newly created courts.

But it is said the law of last session is admitted to be Constitutional, and that we have no power to repeal it. Look at the second section of this law, and compare it with the Constitution, and no candid man will declare it Constitutional. The original jurisdiction given by that section to the judges of the Supreme Court exceeds those intended by the Constitution. [Here Mr. DAVIS read the law and Constitution.] Besides this I think there is an infraction of the Constitution in the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

twenty-seventh section, as well as in that part which relates to the judges of Tennessee and Kentucky before alluded to. As to the right of repealing, I cannot hesitate, because I believe this Congress possesses equal power with the former, and that the power of making and repealing laws is at all times vested in the Legislature. If this be not the case, we lose the benefit of experience, the only faithful guide to human concerns. Most of our statutes are experimentally adopted, and when we find that they operate disadvantageously, we doubtless have the power of repealing. The Constitution in giving power to Congress says, they shall have power to "provide for the common defence and general welfare of the United States." In another place it says, "Congress shall have power to make all laws which shall be necessary and proper to carry into effect the foregoing powers." Those powers are to provide for the general welfare. Now we think, to provide for the general welfare, we ought to make a law declaring the late Judiciary law repealed. Again, it has often been said, that our Government depends very much on the opinion of the people. This Government is divided into three distinct departments. A late ruling party, finding their power about to be wrested from their hands by the people who elect the Representatives and the State who elect the Senators, in the last moments of power passes a law by which they completely take hold of one entire branch of our Government, and fill it with men whose politics are at war with the people. There a majority does not rule; the minority in defiance of the majority hold one branch. I ask, if this is compatible with general opinion or the settled principles of our Government? The honorable member from Pennsylvania, (Mr. HEMPHILL,) in his argument, puts me in mind of the boy who fights his shadow; he raised arguments for us, and then combatted them; the man who runs by himself is sure to win, so the gentleman was sure to triumph, because he took for us the weakest ground, and for himself the strongest. Those who read his speech will suppose the arguments he combatted had been advanced on this floor; but the fact is otherwise; he was the third who spoke, and all who hear me know that the ground he took and called ours, was not occupied by any of us. Is this a fair and candid manner of acting? He tells us that besides the judiciary laws there are other laws that Congress cannot repeal; that a State is admitted into the Union by law, and that there is no power can repeal that law; that a man is admitted to citizenship by law, and no repeal of that law can affect the citizen. The reason is obvious. If a law admits a State into the Union, and the State comes in according to the provisions of the law, the law having had its effect, having discharged its functions, it becomes dead and cannot be repealed. But if Congress should now say the Northwest Territory should, in the year 1806, be admitted into the Union as a State, at any time before the law takes effect the repeal is in the power of Congress. The same may be said as to citizenship. I found my opinion of the expedi-

ency of repealing the Judiciary law, on another reason in addition to that of the courts being unnecessary; I mean the power they declare they have, in the language of Judge Patterson, to "declare a law null and void." Never can I subscribe to that opinion. Never can I believe the Judiciary paramount to both branches of the Legislature; if it is, I have yet to learn it: there is an end to legislation; a knave or a fool can make void your best and most wholesome laws. In the present state of things, how will it affect us? The minority possessing one department of Government, completely frustrates the views of the other two, and governs the nation against the will of the people and the Legislative and Executive power. I am willing to admit the Judiciary to be co-ordinate with the Legislature in this respect, to wit, that judges thinking a law unconstitutional are not bound to execute it; but not to declare it null and void. That power rests alone with the Legislature. But we are told this Judiciary is necessary to check this House and the Senate, and to protect the people against their worst enemies. This is saying to the people, you are incapable of governing yourselves, your representatives are incapable of doing it; in the Judiciary alone you find a safe deposit for your liberties; and saying also, that the Judiciary is the vitals of the nation, wherein all power, all safety dwells; that the Legislature is subordinate thereto and a mere nominal thing, a shadow without substance, its acts perfectly within the control of the Judiciary. I tremble at such ideas. The sooner we put men out of power, who we find determined to act in this manner, the better; by doing so we preserve the power of the Legislature, and save our nation from the ravages of an uncontrolled Judiciary.

Mr. BACON.—In this bill two important inquiries are involved.

1. Is it consistent with the Constitution? 2. Is it expedient to repeal those acts?

Before I proceed to speak directly to either of these questions, I must take the liberty to advert to an important observation made yesterday by the gentleman from Pennsylvania, (Mr. HEMPHILL.) In his very decent and ingenious speech with which he then favored the Committee, he gave an explanation of the terms *office* and *court*. Indeed very much depends, as I conceive, on fixing accurate ideas to those particular terms. Until this is done, that part of the Constitution which applies to the present subject, must remain in a great measure unintelligible, to me at least. Fixing the true meaning of these terms, will, I conceive, go far towards solving any doubt that may exist relative to the constitutionality of the present bill. This idea, there is reason to believe, did not escape the discerning mind of that worthy gentleman, when he observed, that "*office* consists in certain power, jurisdiction and authority, conferred on a person, requiring certain duties. The *court*, the name of the institution, wherein that office is to be exercised. The name of the court may be changed, and also the place where first holden, and the office be exercised in another place."

Those were the words which he used. I fully accede to his explanation of the term *office*, but very much doubt the correctness of his explanation of the term *court*, as it is used in the Constitution. And I am not certain but that the question of constitutionality will very much depend upon the idea that is affixed to this identical term. I believe the term *court*, as it is used in that instrument, means something more than a mere name. Although I will not undertake to give an authoritative and perfectly accurate explanation of the term, yet I may venture to say, that, as used in the Constitution, and in the law proposed to be repealed, it seems to convey the idea of an institution ordained and established for the legal administration of justice. Those things termed courts in the Constitution, are vested with power, and are to exercise jurisdiction, original and appellate. These are attributes which, to my mind, indicate something more than what is merely nominal. I have considered courts as being composed of persons vested with power, jurisdiction and authority, and of whom certain duties are required, that is, as being composed or consisting of officers, particularly of judges; and I am apprehensive that it would be not less difficult to conceive of a court, in the meaning of the Constitution, as existing without officers, than it would to conceive of a Legislature without legislators, or of an officer without an office. If this is not a true, and the only explanation of the term *court*, as used in the Constitution and in the act referred to in the present bill, I shall wish to hear it otherwise explained. If the explanation is just, I believe it will be found in the sequel of debate to go towards a determination of the question relative to the constitutionality of the bill now under consideration.

I will now, sir, proceed to speak directly to the subject of the bill; and will consider in the first place, the constitutionality of repealing the act therein referred to.

If it should be found to be unconstitutional to repeal those acts, no consideration of expediency ought to have the least weight. As to the mere unconstitutionality of the measure, I am apprehensive this will be found not to be a question of vast intricacy and inexplicable doubt, unless we are disposed to make it such.

There are some things relating to this question, and which may tend in some measure to illustrate the subject, about which there can be no reasonable doubt. It will probably be admitted that the Constitution does not require the Legislature to furnish business sufficient to employ the time and talents of all the judges of all the courts of the United States, let their number be ever so great. It will probably be also admitted, that the Legislature are not restricted by the Constitution from so amending and altering the laws from time to time, as may on the one hand tend to diminish, and on the other to increase the business to be transacted in our judiciary courts respectively, nor are they restricted from transferring business from one judiciary court to another. And if the Legislature may, by way of transfer, or otherwise, diminish or withdraw one part of the business from a judiciary

court, they may on the same general principle withdraw another, unless specially restricted by the Constitution. Consequently they may, if they see fit, withdraw the whole in the same way.

All this, it is believed, will not only be readily admitted, but that precedents, from the actual exercise of the power of the Legislature which is here mentioned, are abundantly furnished in the act itself which it is proposed to repeal. And a better authority in this particular case, cannot possibly exist, than what is furnished by this act. It is an authority which, as it applies to this particular case, is not inferior to the Constitution itself. It is an authority which can neither be explained away, nor misunderstood. It may with propriety be said, that in this particular case, it is an authority *instar omnium*; it is indeed equal to all others; because, if I am not mistaken, it absolutely, unequivocally determines the question relative to the constitutionality of the present bill. I should be willing, for myself, to rest the issue entirely on this ground. This is the principal ground that I shall take.

By section tenth of this law, the powers in general which, by the late law, were vested in the former circuit courts, are transferred from those courts to the circuit courts which are established by the present law.

By section twentieth, it is expressly provided that "all actions, suits, process, pleadings, and other proceedings, of what nature and kind soever, depending or existing in any of the present circuit courts of the United States, or in any of the present district courts of the United States, acting as circuit courts, shall be, and hereby are, continued over to the circuit courts established by this act."

By section tenth, it is provided that the circuit courts established by this act shall have cognizance of a great number of causes which were not in like manner cognizable before the former circuit courts, viz: "of all actions cognizable by the judicial authority of the United States, where the matter in dispute is between four and five hundred dollars."

By the twenty-fourth section, it is "enacted that the district courts of the United States, in and for the districts of Tennessee and Kentucky," in particular, "shall be, and hereby are, abolished."

By the twenty-seventh section, "it is further enacted," generally, "that the circuit courts of the United States, heretofore established, shall cease and be abolished."

Here we have a precedent for abolishing, by a single Legislative act, all the judicial courts of a certain description throughout the United States.

In short, sir, the present circuit courts are not only vested with powers different from the former circuit courts, but they are composed of different men; and that while the former judges of these courts are still living, during their good behaviour, and without their resignation, impeachment, or conviction.

All former circuit courts are, by the law in

FEBRUARY, 1802.

Judiciary System.

H. OF R.

question, *ipso facto* abolished. If the circuit courts, established by the law in question, are Constitutional courts, as I take for granted they are, then the former circuit courts do not now exist. And what has become of them? They have been annihilated. By what power have they been annihilated? The answer is ready. They have been annihilated by the same power which first gave them existence, and on the same likewise on which the present circuit courts now depend for their continuance in existence. If, as some gentlemen contend, it is a violation of the Constitution for the Legislature to abolish a judicial court, the law itself which it is in contemplation to repeal, must be an unconstitutional law. And I should not suppose it to be a violation of the Constitution for the Legislature to repeal an unconstitutional law.

The act in question, by which the late circuit courts were abolished, and the present circuit courts established, either is, or is not, a Constitutional act. If it is a Constitutional act, then it was not a violation of the Constitution for the last Congress to pass it. And if it was not a violation of the Constitution for the last Congress to pass the act by which they abolished the circuit courts which then were, and established those which now are, it cannot be any more a violation of the Constitution for the present Congress, by repealing that act, to abolish the circuit courts which now are, and to establish new ones. If, on the contrary, the act in question is an unconstitutional act, I should suppose that of itself was a sufficient reason for repealing it; and that the Constitution, instead of forbidding, demands a repeal of it. So that, whether it is or is not a Constitutional act, the result must be the same; to repeal it cannot be a violation of the Constitution.

I am not disposed to play upon terms, nor would I knowingly descend to a strain of mere metaphysical quibbling on this serious and important subject. I may be mistaken, but I feel as if the argument was not only rational, but absolutely conclusive. If it is fallacious, let it be fairly met, and the fallacy will easily be detected. The sentiments which I now express are not the cursory thoughts of a moment, which have occurred on the spur of the occasion. Whether right or wrong, they are the result of serious and mature reflection. If they are not sound, if they are not salutary, if they are not predicated on those principles of the Constitution which are to be considered as immoveable by any authority short of that by which they were first established, let them be rejected with all that abhorrence which the tongue of man can express, or the human mind conceive. For, I readily admit that the effects resulting from a violation of the Constitution by the Legislature are not less, but, if possible, infinitely more to be dreaded than what any gentleman has described.

Questions of this nature, sir, are not to be determined by mere popular declamation, by a flood of metaphors, nor yet by the less attractive force of opprobrious terms. It is ardently to be desired

that nothing of this kind may ever be suffered to tarnish the deliberations of this House. The subject before us is such as merits the most impartial, candid, firm, and liberal attention. And such, I hope, it will receive. Admitting that the law in question was passed "in a gust of passion"—"at a midnight hour"—and even with views hostile to the equal rights of a free people—still it ought to be met, if met at all, on principles directly the reverse of all these. Otherwise, the remedy applied may prove to be infinitely worse than the disorder itself of which we complain.

It ought, I think, to be agreed by all, that the judges both of the supreme and of "such inferior courts as Congress may from time to time ordain and establish," shall hold their offices during good behaviour; because this is expressly provided for in the Constitution. But, sir, I conceive that, to abolish an office, and to remove an officer from an office while that office exists, are, in the meaning of the Constitution, as well as in common speech, distinct acts, however one of these acts may affect the other. To justify a distinction of this kind, I need only to refer again to the act proposed to be repealed. Is that an act for removing from office a number of judges who, by the Constitution, are entitled to hold their offices during good behaviour? If it is, I will agree with gentlemen on the other side, that it is an unconstitutional act. And I shall expect that, for this reason alone, if there was no other, they will agree with me, that it ought to be repealed. And not only so; but that it is the indispensable duty of the Legislature to repeal it, and to restore those courts which have been thus wantonly abolished, together with the judges who have been thus unconstitutionally removed from office. Even without the aid of the act in question, I believe the distinction between removing an officer and abolishing an office will be found to be a real and obvious one.

Congress are undoubtedly vested with Constitutional power to repeal the act for laying and collecting internal taxes; and in doing this, to abolish all the offices that have been instituted for that purpose. But it will not be pretended that Congress have power, by a Legislative act, either to appoint to, or remove from office, a single officer in that department. A power then to abolish an office, and a power to remove an officer from office are in their nature distinct powers. Admitting therefore, as I really do, that Congress are not, in the meaning of the Constitution, vested with power to remove an officer from office, (whether Judiciary or Executive it matters not,) it will by no means follow that they have not power to repeal the law instituting that office. Should a resolution be brought forward for repealing the law laying duties of excise on stills, &c., would any gentleman who might be opposed to such a resolution, venture to ground his opposition on the unconstitutionality of the measure from this consideration, that it would in effect abolish three-fourths of the offices in the revenue department of the Government, and in this indirect way deprive a host of officers of the offices which the Constitution has

placed as much without the power and control of the Legislature, as it has those of the Judiciary department? Sir, I believe not. The argument, however, would be neither more nor less conclusive in one case than in the other. It is urged, within doors and without, that to repeal the law would be no other than an indirect way of removing judicial officers from office, and of destroying that legal tenure by which they hold their offices. This argument, if such it may be called, and if I understand it, takes for granted the principal if not the only matter in dispute, viz: that every Judicial officer has such a tenure in his office, as puts the office itself entirely beyond the power and influence of the Legislature; so that when the Legislature have, by their own Legislative act, once instituted such an office, they can never afterwards abolish or touch that office without violating the Constitution under which they act. This, sir, is a doctrine abhorrent from the principles of all free governments; it is abhorrent from what has been demonstrated, as I conceive, to be consonant to the principles of the Constitution of the United States; it is abhorrent from the sense and uniform practice of the Legislature, ever since our Government was established; it is more especially abhorrent from the express provisions of the act itself, the repeal of which is now in contemplation.

But, sir, permit me to ask, what would be the consequence of adopting the sentiment of our opponents? Would not this be a cunning and indirect way of tying up the hands of the Legislature, and of restricting that body in the exercise of those powers which the Constitution has vested them with for the safety and welfare of the community at large? Would it not be a cunning and indirect way of fixing an immoveable and intolerable burden on the honest and industrious citizens of the United States, for the private emolument of court favorites, and idle sycophants, and useless drones? And would conduct like this in representatives evince a becoming and sacred regard to the spirit of the Constitution, and to the trust reposed in them by their constituents? Or, would it not rather furnish a melancholy instance of the betrayal of both? Let candor, let common sense, let solid learning, let sound policy, decide these solemn queries.

A decision grounded on all, or on any one of these principles, is such as we wish to abide. And I mean not to suggest a doubt but that our opponents are equally disposed to abide the same impartial test. By what I have now said, I mean no more than to express that clear conviction which exists in my own mind, that the principle for which our opponents contend has a natural and direct tendency to such a state of things as I have mentioned, however pure their views may be who contend for it.

Whether the judges will be entitled to retain their offices and to receive their salaries, provided the act should be repealed, is, as I conceive, a question entirely distinct from that which is now before the Committee. It may perhaps hereafter be made a question, either before the Legislature, or before a judicial court. Whenever this shall hap-

pen, then will be the proper time to consider it. If from a fair and candid examination of the subject it appears, as I think it does, that there is nothing in the Constitution which in the least degree militates against the repeal of the acts, then the only question which remains to be considered is, whether it is expedient to repeal them.

With respect to this question, I will not go into a minute discussion of it. I will only observe, in general, that from the documents which we are furnished with, and from the present situation and state of the nation in general, it does not appear necessary to retain all the courts which by that law have been constituted. It does not appear but that, to say the least, the business of these courts may be transacted equally well by a less number. And as it is in itself not only imprudent, but unjust, to lay unnecessary burdens on our constituents for the private advantage of individuals; as this would have a natural and most direct tendency to weaken the Government, by destroying the confidence of the citizens in it, and alienating their affections from it, I am, for myself, fully convinced that these laws ought to be repealed, and, with my present views of the subject, I shall give my vote accordingly; although, I confess, I am not entirely satisfied with the act proposed to be revived. And I will here take occasion to say, I should, for myself, wish to add two or three more judges to the Supreme Court, and to strike out of that act the sum of five hundred dollars, and insert a much larger sum. Perhaps something like this may take place, either as an amendment to the present bill, or at some future day. If such an amendment might be obtained, I should be much better pleased with it than I am at present.

Mr. T. MORRIS, of New York.—I did flatter myself when the honorable gentleman from Virginia (Mr. THOMPSON) detailed to this Committee the mode of administering justice in the State which he represents, that he would also have added what the decisions and opinions of the courts of that State have been, on questions analogous to those which we are called upon to decide. But, sir, since that honorable gentleman has thought proper to refer to his own State as far only as arguments drawn from thence could answer his purpose, and has not communicated information which might have been adduced from the same quarter, and much more applicable to the present question, I hope that it will not be deemed presumptuous in me to do it. There is not, sir, a State in the Union where the independence of the judiciary has been more highly valued than in Virginia. There is no part of America where a commission during good behaviour has been construed to confer a more independent official tenure on a judge than in the State to which I have alluded. The construction, sir, which my friends and myself are now contending for, is more fully and completely established by the opinions and decisions of the Virginia judges than it is by those of any other part of the Union. And, sir, if I am entitled to form an opinion from the evidence I hold in my hand of the decisions which have at different times been made by the judges of that State, if I

FEBRUARY, 1802.

Judiciary System.

H. OF R.

am permitted to draw any conclusion from the universal acquiescence which they have met with from its citizens, I must believe that if a bill similar to the one before us was introduced into the Virginia Assembly, that so far from meeting with the countenance of that body it would be scouted out of it with indignation. Having made these observations, I must entreat the patience of the Committee, while I read the opinions to which I have alluded.

[Here Mr. RANDOLPH asked from what book these opinions were quoted.]

Mr. MORRIS replied, from a "Friend to the Constitution;" and added, that he believed that they were published with a view to this question; that they had been the subject of much examination and conversation, but that he had never heard their authenticity doubted.

Mr. MORRIS then read the following extracts:

"The Constitution of Virginia declares, that 'both Houses of Assembly shall, by joint ballot, appoint judges of the supreme court of appeals, and general court, judges in chancery, judges of admiralty, secretary and attorney general, to be commissioned by the Governor, and continue in office *during good behaviour*.'"

"The supreme court of appeals in Virginia consisted of the judges of the court of chancery, general court, and court of admiralty, who were by law declared to constitute a court of appeals. The Legislature found the system inconvenient, and determined to change it.

"In 1787 this subject was taken up by the Legislature; a system of circuit courts was adopted, and it was enacted, that the judges of the court of appeals should perform the duty of circuit judges. This law the judges refused to execute as unconstitutional, and agreed unanimously (Edmund Pendleton, George Wythe, John Blair, Paul Carrington, Peter Lyons, William Fleming, Henry Tazewell, Richard Cary, James Henry, and John Tyler, being present,) on a remonstrance, from which will be extracted such parts as are deemed applicable to the present inquiry."

"In deciding the act, the judges declare that the Constitution and the act are in opposition, and cannot exist together; and that the former must control the operation of the latter."

"The propriety and necessity of the independence of the judges is evident in reason and the nature of the office; since they are to decide between government and the people, as well as between contending citizens; and if they be dependent on either, corrupt influence may be apprehended, sacrificing the innocent to popular prejudice, and subjecting the poor to oppression and persecution by the rich: and this applies more forcibly to exclude dependence on the Legislature, a branch of which, in cases of impeachment, is itself a party."

"The people, continues the Court of Appeals, 'have, in their form of government, declared that the judges should hold their offices during good behaviour.' Their dependence would have been rendered complete by fixing the quantum of their salaries."

"On a subsequent occasion a contest, not very different in principle, arose, in the same State, between the Legislative and Judicial Departments, in which the point in controversy was again yielded by the Legislature."

"In 1794 it was enacted that the judges of the dis-

trict courts, who are also judges of the general court, should so far exercise chancery jurisdiction as to grant injunctions to their own judgments, and decree finally, in cases of an equitable nature, which originated by way of injunction.

"It will be recollected, that by the Constitution of Virginia, the two Houses of Assembly, 'by joint ballot appoint judges of the supreme court of appeals and general court, judges in chancery,' &c.

"Under the act just stated, an application was made to the district court at Dumfries for an injunction, which was referred to the general court, and, on solemn consideration, was unanimously rejected, on the principle that the law was unconstitutional. In giving their opinions, some of the judges stated reasons entirely applicable to the subject we are now considering.

"Judge Roane observed, 'Though a judge is interested privately in preserving his independence, yet it is the right of the people which should govern him; who, in their sovereign character, have provided that the judges should be independent: so that, in fact, it is a controversy between the Legislature and the people, though perhaps the judges may be privately interested.

"If there can be judges in chancery, who have, on commission, during good behaviour, their tenure in office is absolutely at the will of the Legislature, and they consequently are not independent. The people of Virginia intended that the Judiciary should be independent of the other departments. They are to judge where the Legislature is a party, and therefore should be independent of it; otherwise they might judge corruptly in order to please the Legislature, and be consequently continued in office. It is an acknowledged principle in all countries that no man shall be judge in his own cause; but it is nearly the same thing where the tribunal of justice is under the influence of a party. If the Legislature can transfer from Constitutional to Legislative courts, all judicial powers, these dependent tribunals, being the creatures of the Legislature itself, will not dare to oppose an unconstitutional law."

"Judge Tyler.—The Constitution says, that 'judges in chancery shall be appointed by joint ballot of both Houses of Assembly, and commissioned by the Governor during good behaviour;' and for the most valuable purpose—to secure the 'independence of the Judiciary.' Contrary to this express direction, which admits of no doubt, implication, or nice construction, that bane to political freedom, the Legislature, has made the appointment by an act mandatory to the judges, leaving them not at liberty to accept or refuse the office conferred, which is a right every citizen enjoys in every other case; a right too sacred to be yielded to any power on earth; but were I willing to do it, as relates to myself, as a judge I ought not, because it would frustrate that important object beforementioned, intended by the Constitution to be kept sacred, for the wisest and best of purposes: to wit, that justice and the law be done to all manner of persons, without fear or reward. For how would the right of individuals stand when brought in contest with the public, or even an influential character, if the judges may be removed from office by the same power which appointed them, to wit, by a statute appointment, as in this case, and by a statute disappointment, as was the case in the courts of appeals? Might not danger be apprehended from this source when future times shall be more corrupt?" "Let me now compare the law with the Constitution in another point; that of the want of a commission during good behaviour, and the reasons will

H. OF R.

Judiciary System.

FEBRUARY, 1802.

fully and forcibly apply. When I receive the commission I see the ground on which I stand; I see that my own integrity is that ground, and no opinions but such as are derived from base motives can be sufficient to remove me from office; in which case, whensoever an appeal is made to me by an injured citizen, I will do him justice as far as my mental powers will enable me to discover it, without any apprehensions of an unjust attack."

"Judge Tucker, in a very elaborate opinion, which will do credit to his talents so long as it shall be read, thus expressed himself:

"The independence of the Judiciary results from the tenure of their office, which the Constitution declares shall be during good behaviour. The offices which they are to fill must therefore be permanent as the Constitution itself, and not liable to be discontinued or annihilated by any other branch of the Government. Hence the Constitution has provided that the Judiciary department should be arranged in such a manner as not to be subject to Legislative control. The court of appeals, court of chancery, and a general court, are tribunals expressly required by it; and in these courts the Judiciary power is either immediately or ultimately vested.

"These courts can neither be annihilated nor discontinued by any Legislative act, nor can the judges of them be removed from their office for any cause except a breach of their good behaviour."

"But if the Legislature might at any time discontinue or annihilate either of these courts, it is plain that their tenure of office might be changed, since a judge, without any breach of good behaviour, might in effect be removed from office by annihilating or discontinuing the office itself."

Mr. MORRIS then proceeded: I have stated these opinions at full length, because I conceive that they determine every principle that we are contending for. We find, sir, the ablest judges who have graced the bench of Virginia, deliberately declaring acts of the Legislature of that State unconstitutional. We find them contending for, and maintaining their independence against all legislative attempts to lessen or destroy it. We find them claiming this independence from the words of a Constitution, which declares that they shall be commissioned during good behaviour. We find, also, that in a contest on this subject between the Legislature and the Judiciary, that the latter prevailed; from whence we have a right to infer, that the public sentiment was with the judges. Why then, Mr. Chairman, are most of the gentlemen who represent that State, anxious to divest the General Government of a privilege so highly valued in their own State? Is the independence of the national Judiciary of less importance than that of Virginia? I trust it is not. A State Judiciary, according to the opinion of the Virginia judges, has to protect a citizen against the Government as well as to decide between citizen and citizen. What have the national tribunals to do? Why, sir, they have not only to protect a citizen against a State government, not only to protect him also against the General Government, but, sir, they may be even called upon to decide between a State and the General Government. These are the great purposes for which your Con-

stitution has vested your Judiciary with powers independent of other departments of the Government, that it may effectually interpose between the meanest of your citizens and secure them against the oppression either of an arbitrary Legislature or a tyrannical Executive.

Sir, previous to the commitment of this bill, when an incidental question arose on it in the House, an honorable gentleman from Virginia (Mr. RANDOLPH) spoke of the present as a very favorable moment for us to determine this great Constitutional question. An honorable gentleman from Kentucky has this day expressed the same sentiment. Sir, I cannot agree with either of these honorable gentlemen. I believe that this is of all moments the most unfortunate for such a determination. I believe so, because such have been the fatal effects of Executive persecution, that it has wrought up party spirit to its highest pitch of irritation. [Here there was a cry of order from different parts of the House.]

Mr. MORRIS observed that he did not mean to say anything that was disorderly, but that having occasion to allude to the present state of irritation of the public mind, he could not help attributing it to what he believed to be the true cause of it. Mr. M. then proceeded: Sir, I am incapable of attributing to a majority of this House a settled determination of violating the Constitution of their country, but I do believe that if they act from the impulse of the present moment, that valuable instrument will be sacrificed at the altar of resentment. And how can this belief be resisted, when you hear so respectable a gentleman as the honorable member from Kentucky so far get the better of his usual discretion as to permit himself to say in his place, that with the public sentiment judges and other officers ought to be changed, and that he would vote for the bill because in no other way can judges be driven from their posts? Sir, such a sentiment expressed on the floor of this House, is of itself convincing, that gentlemen are not in a state of mind to examine this subject coolly and dispassionately, and therefore I must repeat again, that it is the most unfortunate of all moments for its discussion.

The further consideration of the bill was then postponed till to-morrow.

THURSDAY, February 18.

Memorials of sundry inhabitants of the city and county of Philadelphia, in the State of Pennsylvania, whose names are thereunto subscribed, were presented to the House and read, respectively praying a repeal of the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one entitled "An act to provide for the more convenient organization of the Courts of the United States."—Referred.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred a resolution of this House of the twenty-ninth ultimo, presented a bill for the accommodation of persons concerned in certain fisheries therein mentioned; which was read twice and committed to

FEBRUARY, 1802.

Judiciary System.

H. OF R.

a Committee of the Whole House on Monday next.

A Message was received from the President of the United States, transmitting a letter from the Secretary of War on the subject of certain lands in the neighborhood of our military posts, on which it might be expedient for the Legislature to make some provisions. A letter was also received from the Governor of Indiana, on the same subject. The said Message and letter were read, and ordered to lie on the table.

THE JUDICIARY BILL.

The House again resolved itself into a Committee of the Whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States and for other purposes."

Mr. STANLEY.—Mr. Chairman, the impression I feel of the importance of the question at present before us, would alone induce me to assign the reasons of the vote which I shall give; but, sir, I am urged by another strong reason to justify that vote. The Legislature of the State of North Carolina, a part of which I have the honor to represent, has thought proper to recommend to her Representatives on this floor, to use their endeavors to effect the measure contemplated by the bill on your table for the repeal of the act of the last Congress, entitled "An act for the more convenient organization of the Courts of the United States." Holding myself responsible to my constituents for the vote which I shall give on this, as on every other question, I cannot admit the right of any other authority, however respectable, to control, or in any manner to influence my conduct. The high respect I feel, and which is justly due to the honorable body which has made this recommendation, has induced me to review, with deliberation and caution, the opinion I had formed, and though it is painful to differ from those whom I esteem, yet my duty to my constituents compels me to do so in this instance. I owe, also, a duty to myself, to give no vote which my conscience and my understanding do not approve.

Every measure which is brought under the consideration of a Legislature must first be tested by its expediency. Unhappily, in the present instance, another question arises—its constitutionality. I will endeavor, concisely, to examine the subject on both those points. And, first, as to the expediency of this measure. In order to form a correct estimate between the present Judiciary system of the courts of the United States and that for which it was substituted, it is proper to take a comparative view of both.

Under the former system, there were six judges of the Supreme Court of the United States, who held two sessions of the Supreme Court in each year, at the seat of Government. Those judges also held in each State a circuit court, two terms in each year, in which the judge of the district was associated with the circuit judge. The organization of the district courts having jurisdiction, principally, of matters affecting the revenue and admiralty causes, not being connected with

the present question, need not be examined. From the errors of this system resulted, first, a delay of justice. The judges bound to hold courts in succession at remote parts of the continent, were continually travelling; from the variety of accidents to which travellers are subjected in this country, from the condition of roads and overflowing of rivers, it frequently happened that the judges failed in their attempts to get to the courts, or arrived so late that little business was done. Suitors, jurors, and witnesses, were subjected to the trouble and expense of attending courts without the accomplishment of their business; hence resulted a delay of justice. In the State to which I belong, during the few years existence of the former system, this was the case frequently.

Another great evil resulting from that system was, its tendency to lessen the character and respectability of the Federal bench. Those best acquainted with the profession of the law will most readily admit, that even a life of patient study is unequal to the complete attainment of principles and rules; and that much labor and industry are necessary to preserve that which is gained. Consequently, that extent of legal knowledge, correctness of judgment, and respectability of character, which should designate the persons qualified for this important trust were seldom to be found, but in men far advanced in years. Men possessing these qualifications, not inured to labor, are seldom equal to the fatigue of their duty; or, if at the time of appointment, fast approaching to the infirmities of age, were not to be expected to relinquish the enjoyments of private life for an office, which, however honorable, subjected them to the fatigue of a day laborer. The office, with its incumbrances, was, as it were, offered to the lowest bidder. And men best qualified to honor the bench, were driven from it. True it is, men have been found eminently uniting virtue and talents, who have accepted the office under all its distressing circumstances, but we owe this rather to their patriotism than to the advantages of the situation. Let it also be remembered that, in some instances, gentlemen who would have adorned the seat of justice of any country, were compelled to relinquish their seats; and in others, refused to accept the appointment.

Another error of that system was, that the judges of the Supreme Court, the court in the last resort, before whom the errors of the inferior circuit courts were to be corrected, were the same men who presided in those circuit courts. With great deference for the opinions of gentlemen who prefer that system, I pronounce my opinion, that its errors were radical; that those who justly estimated the importance to our interest and national character, of a speedy and correct administration of justice, ought to have desired a change. The present system has happily obviated these errors. The States are divided into six circuits; in each State is appointed one judge, called a circuit judge; the judges of the States, composing one circuit, ride together into the States of their circuit, and together hold the court. The much smaller distance which those judges have to travel

than the circuit judges, under the former system, secures their due attendance; a portion of their time is left them to study and reflection, and the same persons presiding at successive terms, a uniformity of decision is preserved. The six former judges hold the Supreme Court, with original Constitutional jurisdiction in matters of the utmost national importance, and appellate jurisdiction, in certain cases, where the sum in dispute is two thousand dollars; they are also the court in which the errors of the circuit court are examined and corrected.

If, sir, the organization of the circuit courts could have been improved by a system preferable to the present, it is my misfortune not yet to have heard of it. I will now, sir, examine the objections which are urged against the present system, and the gentleman from Kentucky (Mr. DAVIS) must pardon me, if, in doing so, I notice some not yet advanced on this floor; which, though he is pleased to term "shadows," have yet been imposed on the American people for *substance*. The honorable member from Virginia (Mr. THOMPSON) has charged this system with a great increase of expense. What, sir, is the amount of this increase of expense? The estimate from the Treasury Department informs us that the salaries of the judges created under the act of last Congress, and the addition made to the salaries of the judges of Tennessee, Kentucky, and Northwest Territory, amount to thirty-two thousand dollars. Some contingent expenses are necessary, which cannot be estimated at more than eight thousand dollars; making, together, the sum of forty thousand dollars; a sum which, when compared with the magnitude of the object, or the vast revenue and resources of the country, becomes an atom, the dust of the balance. But, sir, permit me to ask, when was it discovered that the people of America were so sordid as to consider their gold their chief good? I had believed, sir, they justly estimated it the instrument by which their good might be promoted. When we took the field for independence, did any cool calculator estimate the cost? Is our Republican Government, founded on, and guaranteeing, the equal rights of man, preferred, because of its cheapness? No, sir; with the honest pride of an American, I reply, they act from nobler motives. If the purpose on which the money is bestowed be necessary, the people ought to submit to the expense; for an improvement in so valuable an institution as the Judiciary, by which the weak and the poor are protected against the great and the opulent, the people will submit to it.

The President has laid before us a document, exhibiting the business which has been decided in the Federal courts, with a statement of what was pending when this document was taken. I shall say nothing further of the errors which have been detected in this document, than that I do not attribute them to the Executive; as he received it, I presume, he submitted it to us. But, sir, I cannot but express my admiration of the novelty, if not the solidity of the argument, founded on this document, that courts are necessary and useful, in

proportion to the quantity of business before them. Can gentlemen believe that because, at the time of taking these statements, there was less business than there had been before, that, therefore, litigation would decline; that nothing would exist but peace and good will among men? If this is not believed; if commerce will continue, and passion rule us, so long will there be litigation, so long will there be a necessity for courts; their existence will be beneficial, though without business; they show to the citizens and to the world, that we are prepared to punish crimes and administer justice; and it becomes our duty to establish that system which shall best promote the great objects of a speedy and correct administration of justice. The argument drawn from this document is fallacious on another ground; the paucity of suits is owing, not to the want of litigation on questions within Federal jurisdiction, but because of the erroneous organization of the courts under the former system, suitors were driven into the State courts.

The same honorable member from Virginia, has told us the former courts were sufficient; and, to establish his point, has adduced evidence from that respectable State, the Ancient Dominion; the gentleman tells us that, in that State, one venerable man has the whole extensive chancery jurisdiction of the State, the docket of which contains 2,600 causes. Without inquiring what portion of this multitude of business the judge is able to perform, I do not hesitate to say, the fact can have no weight, in establishing the gentleman's argument. We did not complain, sir, that, under the former system, the judges had too extensive a jurisdiction, nor that there was a multitude of causes; but that the discharge of their duty, however limited their jurisdiction, however few the causes, compelled them to a perpetual travelling, leaving them no time for study, and subjecting the courts to delay; though their jurisdiction had been limited to one species of action only, and the business in court reduced to a single cause, the labor and uncertainty of travelling from New Hampshire to Georgia was still the same.

It is objected against the act proposed to be repealed, that a dangerous patronage is created by it for the President. I shall pass over what I consider an inconsistency in this objection coming from gentlemen who profess that implicit confidence is due to the man chosen by the people, who, in his appointments, speaks not less the voice of the people than the voice of God, and examine the weight of the objection. If this apprehended patronage means the power of appointing the Judiciary, that power is given by the Constitution, and is the same, whether the power of the Judiciary be vested in six or in sixteen judges. If it fear an undue control over the people in favor of the Executive, through the Judiciary, make the judges as independent as we contend they are and ought to be, and they are placed beyond the necessity of descending to the practice of improper means to preserve Executive favor.

We have been told, sir, that it is necessary the judges should ride into the States to gain a knowl-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

edge of the laws by which, in many cases, they are to decide. Until this occasion I have never heard that the laws of a country could only be acquired in the atmosphere of that country where they are in force. Nine-tenths of the decisions in our State courts and Federal courts turn on questions of common law; yet, has it ever been suggested that an American judge was incompetent to decide on common law questions, because he had not studied in England? No, sir, the knowledge in both cases may be acquired in the closet. To these observations permit me to add, that the remonstrances from the bar of Philadelphia, composed of gentlemen no less celebrated for the respectability of their private than of their professional character, who, on this occasion, so interesting to the welfare of their country, have sacrificed their political prejudices, strongly expressing their decided preference of the present system to the former, is, to my mind, conclusive, that it ought to be preferred. I am, therefore, of opinion, that it is inexpedient to pass the present repealing bill; and so long as my opinion is supported by the respectable authority I have just alluded to, and opposed only by the objections which I have noticed, I shall feel satisfied that opinion is correct.

In approaching the second question which I proposed to examine—the constitutionality of the measure—whether I reflect on the magnitude of the question on the one hand, or my inability on the other, I am, indeed, humbled before the undertaking.

Without examining whether Government, according to the modern opinion, should be founded on the reason and sense of justice of man, it is certain our Government is calculated to guard against his weakness and his wickedness. Our Government has been particularly cautious on this subject; it has left nothing to the hazard of reason or sense of justice; it has carefully delegated powers to three distinct departments, and separated these departments by boundaries plainly marked and formed, each so as not to control, at least to check, the other. The Legislative powers, though vested in men chosen frequently and by the people themselves in one branch, and by the immediate agents of the people in the other, are nevertheless the object of suspicion and caution. Their powers, far from resting on their discretion or sense of expediency, are expressly and cautiously limited. The Executive conditional veto forms one check on the Legislature; the Judiciary, I shall contend, are a check on both. Here, permit me to say, that from the spirit and the words of our Constitution, I infer that the Judiciary are a co-ordinate department with the Executive and Legislative. The framers of our Constitution, satisfied that the powers of well organized Governments ought to be divided into three branches—Legislative, Executive, and Judicial—have nowhere expressly declared there shall be such departments, but, after premising the objects of the Government, proceed to ordain how the Legislature shall be composed; and article two, section two, declares, "The power shall be

vested in a President of the United States of America; he shall hold his office during the term of four years," and prescribes the mode of election. Article three, section one, also declares, "The Judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and the judges of the supreme and inferior courts shall hold, &c., during good behaviour. By comparing these sections of the Constitution, it appears the Judiciary and the Executive are expressly created by the Constitution, and nothing is left to the discretion of Congress, as to the existence of these departments; they are created by the same words; and if the Legislature claim a right to put down the Judiciary at pleasure, before the happening of that event till which the Constitution secures their offices—their misbehaviour—they may as well assume the right to remove the President before the happening of that event till which his office is secured, to wit, the expiration of four years. I shall attempt to establish as a first principle, that the Judiciary are a check on the Legislature, and thence to show first, that, by the spirit of our Constitution, the Judiciary ought to be independent, beyond the control or influence of either of the other departments of power; and, secondly, that, by the words of the Constitution, they are so secured.

First, then, that the Judiciary are a check on the Legislature. In the Constitution, we find certain powers delegated to Congress; we also find they are prohibited from exercising certain powers; among which are, they shall pass no *ex post facto* law, no bill of attainder, no law respecting religion, &c. Should, unhappily, a Legislature be found who, from weakness or wickedness, or the union of both, should transgress the bounds prescribed, what is the security of the citizen? After all the experience derived from the example of other Governments, after all the deliberation and wisdom of our sages who framed the Constitution, are we left, in this important instance, as under the despotism of a monarch, to seek redress through the throes and convulsions of a revolution? No, sir. The Judiciary are our security. The Legislature may enact penalties, and denounce punishments against those who do not yield obedience to their unconstitutional acts; their penalties cannot be exacted, nor punishments inflicted, without the judgment of a court. The judges are to expound the law, and that fundamental, paramount law, the Constitution. To this purpose they are sworn to support the Constitution. While the Judiciary firmly, independently, and uprightly, discharge their duty and declare the act of the Legislature contrary to the Constitution, to be void, the Legislature are checked, and the citizen shielded from oppression and persecution. But, ask gentlemen whence do the courts derive this power, and the honorable gentleman from Virginia, (Mr. THOMPSON) says, we are contending for this common law doctrine, that the courts are a check on the Legislature. If I misunderstood the gentleman, I trust he will

correct me. Sir, that gentleman, I am willing to presume, knows, what I assure him no gentleman with whom on this occasion I act, is ignorant of, that this is not a common law doctrine; that in England their courts have no check on the Legislature—their Parliament are emphatically styled omnipotent, and if they violate the few natural rights that remain to the citizens, they have no remedy but in a resort to revolutionary principles; it was the want of this check to the oppressions of their rulers, which has produced civil wars, and driven one monarch from his kingdom, and sent another to the scaffold. This power exists in no other Government, because under no other Government does there exist a Legislature with limited powers; under our Government it is the very essence, the constitution of a court, the oath enjoined on them to support the Constitution. The exercise and the admission of this right are not new in America; instances must be in the recollection of every gentleman. I will cite a few most prominent: The honorable member (Mr. THOMPSON) has been pleased to call the attention of the Committee to the examples drawn from his State; I beg leave to profit from the same source. In 1787, the Legislature of that State passed an act making new arrangements in the jurisdiction of the courts. The judges, among whom was that venerable gentleman mentioned by the member from that State, whose merits and worth command the sincere homage of my respects, protested against this act, and refused to carry it into effect; the Legislature acquiesced, and the law was repealed.

Upon the imposition of the carriage tax by Congress, a citizen of Virginia refused to pay the tax, on the ground that it was unconstitutionally laid. He was sued for the penalty in the circuit court of that State, from whence, by writ of error, the suit came before the Supreme Court; in this case the defendant relied solely on the unconstitutionality of the act of Congress, and on this ground was defended by the attorney general of the State of Virginia, and the attorney general of the State of Pennsylvania. At this time, then, it appears that these learned gentlemen, the judges, and the citizens, thought the court competent to relieve in case the law was judged to be unconstitutional. In 1792, Congress passed an act imposing certain duties respecting invalid pensioners, upon the judges of the circuit court. The judges, at the first court after this act, protested against it; their protests were transmitted to the President of the United States—that President who had presided in the General Convention which framed the Constitution, and, therefore, as likely to understand the powers of Congress on the judiciary as any other man, so far sanctioned their opinions as to transmit them to the next Congress, where the act was reconsidered and repealed. I beg leave, also, to allude to the authority before mentioned, by my friend from Pennsylvania, (Mr. HEMPHILL,) which I should think of some weight here. It is the opinion of a gentleman, venerable for his age, respectable for legal knowledge, and distinguished for what, in the

fashionable language of the day, are termed republican principles. I mean the Executive of Pennsylvania; that gentleman, in assigning to the Legislature of his State his reasons for not approving an act they had laid before him, after expressing his doubts of the constitutionality of the act, declares, "he cannot, from a confidence in the legal knowledge, integrity, and fortitude of his former brethren in the Supreme Court, risk his character in a judicial decision on this question, when he does not see any advantage to be derived to his country from a possibility of success." If any words can make more plain the opinion here conveyed, it is that he considers the judges have the power and will exercise it, to declare the act unconstitutional.

To my mind, these considerations are satisfactory, that, from the very constitution of our courts, from the practice and admission of our State courts and State Legislatures, and Federal courts, and Federal Legislature, that the judges of the United States, sitting in court, have the power, and by oath are bound to pronounce, that an act contrary to the Constitution, is void. From the establishment of this proposition, that the judges are the expounders of the Constitution, and the laws made under it, and that they are thereby a check on the Legislature, I shall infer that, by the spirit of our Constitution, they ought to be independent of the other branches of Government, but particularly so of the Legislature. The concentrating the branches of power either Executive and Legislative, or Legislative and Judiciary, in the same hands, is the very essence of tyranny; in proportion as we advance towards the union of those powers, in the same proportion do we recede from liberty. Are these departments separate, unconnected—if the Legislature by any means procure their will either directly or indirectly, to be substituted for or to overrule judicial judgment? Whether the Legislature expound and adjudge their acts themselves, or submit them to the exposition and judgment of a judiciary subservient to them, is essentially the same. If the Legislature exercise the power of removal from office by the direct means of a vote of removal, or by the indirect means, the legislative legerdemain of a repealing act, is precisely the same thing, the judges are no longer independent, but dependent on the Legislature for their offices, and subject to their control; a consequence entirely repugnant to the spirit of our Constitution. I shall attempt to show, that by the words of our Constitution, the judges are placed beyond Legislative control. Article three, section one: "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." Until the contemplation of the present measure, I incline to believe, it never entered the mind of any man acquainted with this clause of the Constitution, that judges should be removed otherwise than by impeachment for misdemeanor. The advocates for this Legislative power contend that the tenure

FEBRUARY, 1802.

Judiciary System.

H. OF R.

of "good behaviour" in this article of the Constitution is intended to restrict Executive and not Legislative power. It does not appear probable that an express restriction should be introduced against a power which is nowhere expressly granted; for gentlemen know that the Executive power of removal from office is a power admitted from construction, and not founded on anything drawn from the Constitution. I say this rather, because, by the Constitution, the aid of the Senate is necessary to appoint, and *a fortiori* should be necessary to remove. It is important to ascertain what was the intention of the framers of the Constitution in introducing the words "good behaviour." The most correct source in our power from which this aid may be derived, is the writings and opinions at that day of those who aided in the great work. Among those publications which were written for the purpose of explaining and recommending this Constitution, the most celebrated are those pieces over the signature of "Publius," written by the pens of gentlemen of leading influence in the Convention, and whose talents and patriotism are still honored by the nation. In that part of this work which treats of the tenure of the office of judge during "good behaviour," I find this strong expression:

"The standard of good behaviour for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of Government. In a monarchy, it is an excellent barrier to the despotism of the prince. In a republic, it is a no less excellent barrier to the encroachments and oppressions of the representative body."

This, sir, to my mind, is conclusive, that the Convention intended this tenure as a restriction no less on Legislative than on Executive power, and that, in this sense of the phrase, the people of America received this part of the Constitution. In ascertaining the import of the words "during good behaviour," it is certainly important to inquire the end to which they have been used in other similar cases. My colleague (Mr. HENDERSON) has, with much abler talents, shown that, in most of the State constitutions, which existed before our Federal Constitution, these words are used to fix the tenure of offices where the Executive have neither express nor constructive power of removal; consequently, they are in those constitutions restrictive of the Legislative power. If, then, the framers of our Constitution borrowed this tenure from these State constitutions, it is fair and reasonable to conclude they used them in the sense in which they were previously received. But, says my colleague on the other side of the House, (Mr. ROBERT WILLIAMS,) the judges in England hold their offices by the tenure of "good behaviour," and yet are removable on an address from both Houses of Parliament, and he infers that the terms may have been taken from England. To this I will first observe, that no fair argument can be drawn from the existence of this Legislative power there, for the exercise here. The mode of appointment there may render such control over the Executive necessary, which, from

the provisions of our Constitution, are not wanted here. In England, the King has the sole power of appointment—the people have no previous check. In this country, the Executive appointment is checked by the requisite sanction of the Senate. But is this Legislative power in Great Britain usurped by construction? No, if the gentleman will read again the statute of 13 William III., he will find that this power of removal is expressly granted by the Crown to Parliament. If, then, one convention had this statute before them, in adopting that part which relates to the tenure of office, and omitting that part which gives the power of removal, it is not to be presumed they intended so important a power should depend on construction. The same gentleman (Mr. ROBERT WILLIAMS) also contended that it could not be presumed the Convention intended to restrict the power of the Representatives of the people, the friends of the people. What will the gentleman say of the correctness of his opinion, when I remind him that our powers are all expressly restricted; that the same article which fixes the tenure of "good behaviour," expressly and undoubtedly guards against the power of the Representatives of the people, the friends of the people, by securing the salaries of the judges undiminished during their continuance in office.

But, as strong an argument as can be used against this constructive Legislative power, is the evils which may result from the exercise of it. Popular assemblies are as much under the dominance of passion as individuals; they feel as sensibly and resent as malignantly. He who has not made this observation is a stranger to what has passed in all popular governments; and I am sorry to add, a stranger to what has so lately passed in this country. By the exercise of this power, firm, upright judges, men of unbending virtue, are to be removed upon every change of administration, to make way for more pliant minions, the humble instruments of the Legislature. The bulwark of our liberties against Legislative encroachment, the independence and purity of our Judiciary, is tumbled into ruins, and the rights of millions are crushed by its fall. The sacred altar of justice is polluted, the sword of justice becomes the rod of oppression. On the other hand, what danger is to be apprehended from that independence of the judges for which the friends of the Constitution contend? Not that bad and corrupt men will be fastened on us. No, the Constitution provides for their removal by impeachment. Not that they will viciously oppose the Constitutional acts of the Legislature. No, the Legislature are a check upon them by the mode of impeachment, in which the House is the accuser and the Senate the judge. If the judge be corrupt, if he misdeemean himself, he may be removed. If he continue pure and upright, he ought not to be removed; no earthly power, but the mighty hand of the people, which formed the Constitution and can destroy it, can legally remove him. Should this measure be adopted, and the independence of our Judiciary destroyed; should the administration of our Government un-

fortunately pass into the hands of men who feel power and forget right, our Constitution becomes indeed "a Lilliputian tie;" and this measure will be the first link in that chain of measures which will add the name of America to the melancholy catalogue of fallen Republics.

Mr. GILES said that he felt some degree of apprehension, that, in the course he deemed it necessary to take in the discussion of this question, some observations might fall from him which might not be in strict harmony with the feelings of some gentlemen of the committee. He should regret, however, if a compliance with a sense of duty should produce that effect. He said, therefore, that he wished to apprise gentlemen, that he intended to direct his observations as much as possible to the effects and tendencies of measures; and that when he was constrained to speak of the views of gentlemen, it would be with respect to what he conceived to be their opinions in relation to the general interests, and not to private gratifications. He said it was natural that men should differ in the choice of means to produce a given end, and more natural that they should differ in the choice of political means than any other; because the subject presented more complicated and variable objects, out of which to make a choice. Accordingly, a great portion of the human mind has been at all times directed towards monarchy, as the best form of government to enforce obedience and insure the general happiness; whereas another portion of the human mind has given a preference to the republican form, as best calculated to produce the same end; and there is no reason for applying improper motives to individuals who should give a preference to either of the principles, provided in doing so they follow the honest dictates of their own judgments. It must be obvious to the most common observer, that, from the commencement of the Government of the United States, and perhaps before it, a difference of opinion existed among the citizens, having more or less reference to these two extreme fundamental points, and that it manifested itself in the modification or administration of the Government as soon as it was put in operation. On one side, it was contended, that in the organization of the Constitution a due apportionment of authority had not been made among the several departments; that the Legislature was too powerful for the Executive department; and to create and preserve a proper equipoise, it was necessary to infuse into the Executive department, by legislation, all artificial powers compatible with the Constitution, upon which the most diffusive construction was given; or, in other words, to place in Executive hands all the patronage it was possible to create, for the purpose of protecting the President against the full force of his Constitutional responsibility to the people. On the other side, it was contended, that the doctrine of patronage was repugnant to the opinions and feelings of the people; that it was unnecessary, expensive, and oppressive, and that the highest energy the Government could possess, would flow from the confidence of the mass of the people, founded upon

their own sense of their common interests. Hence, what is called party in the United States, grew up from a division of opinion respecting these two great characteristic principles. Patronage, or the creation of partial interest for the protection and support of Government, on the one side: On the other side, to effect the same end, a fair responsibility of all representatives to the people; an adherence to the general interests, and a reliance on the confidence of the people at large, resulting from a sense of their common interests. A variety of circumstances existed in the United States, at the commencement of the Government, and a great number of favorable incidents continued afterwards to arise, which gave the patronage system the preponderancy, during the first three Presidential terms, of election; notwithstanding it was evident, that the system was adopted and pursued in direct hostility to the feelings and opinions of a great portion of the American people. The Government was ushered into operation under a vast excitement of federal fervor, flowing from its recent triumph on the question of adopting the Constitution. At that time a considerable debt was afloat in the United States, which had grown out of the Revolutionary war. This debt was of two kinds: the debt proper of the United States, or engagements made by the United States in their federal capacity; the other, the State debts, or engagements entered into by the respective States for the support of the common cause.

The favorers of the patronage system readily availed themselves of these materials for erecting a moneyed interest; gave to it a stability, or qualified perpetuity, and calculated upon its certain support in all their measures of irresponsibility.

This was done not only by funding the debt proper of the United States, but by assuming the payment of the State debts, and funding them also; and it is believed, extending the assumption beyond the actual engagements of the States. Hence the Federal axiom, that a public debt is a public blessing. Shortly after this event, an Indian war sprang up—he would not say by what means—in consequence of which an army was added to the list of patronage. The Algerines commenced a predatory war upon the commerce of the United States, and thence a navy formed a new item of patronage. Taxes became necessary to meet the expenses of this system, and an arrangement of internal taxes, an excise, &c., still swelled the list of patronage. But the circumstance which most favored this system was, the breaking out of a tremendous and unprecedented war in those countries of Europe with which the United States had the most intimate relations. The feelings and sympathies of the people of the United States were so strongly attracted by the tremendous scenes existing there, that they considered their own internal concerns in a secondary point of view. After a variable conduct had been pursued by the United States in relation to these events, the depredations committed upon commerce, and the excitements produced thereby, enabled the Administration to indulge themselves in a more

FEBRUARY, 1802.

Judiciary System.

H. OF R.

decisive course, and they at once pushed forward the people to the X, Y, Z, of their political alphabet, before they had well learned and understood the A, B, C, of the principles of the Administration.

Armies and navies were raised, and a variety of other schemes of expense were adopted, which placed the Administration in the embarrassing predicament, either to violate their faith with their public creditors, or to resort to new taxes. The latter alternative was preferred, accompanied with other strong coercive measures to enforce obedience. A land tax was laid for two millions of dollars. This measure awakened the people to a sense of their situation; and shook to the foundation all those federal ramparts which had been planned with so much ingenuity, and erected around the Executive with so much expense and labor. Another circumstance peculiarly favorable to the advocates of Executive patronage was, that during the two first Presidential terms, the Chief Executive Magistrate possessed a greater degree of popularity and the confidence of the people than ever was, or perhaps will ever be again attached to the person occupying that dignified station. The general disquietude which manifested itself in consequence of these enterprising measures, in the year 1800, induced the Federal party to apprehend that they had pushed their principles too far, and they began to entertain doubts of the result of the Presidential election, which was approaching. In this state of things, it was natural for them to look out for some department of the Government in which they could entrench themselves in the event of an unsuccessful issue in the election, and continue to support those favorite principles of irresponsibility which they could never consent to abandon.

The Judiciary department, of course, presented itself as best fitted for their object, not only because it was already filled with men who had manifested the most indecorous zeal in favor of their principles, but because they held their offices by indefinite tenures, and of course were further removed from any responsibility to the people, than either of the other departments. Accordingly, on the 11th of March 1800, a bill for the more convenient organization of the courts of the United States, was presented to the House of Representatives. This bill appears to have had for its objects, First, the gradual demolition of the State courts, by increasing the number and extending the jurisdiction of the Federal courts. Second, to afford additional protection to the principles of the then existing Administration by creating a new corps of judges of concurring political opinions. This bill, however, was not passed into a law during that session of Congress, perhaps from an apprehension that it would tend to increase the disquietudes which other measures had before excited, and therefore operate unfavorably to the approaching Presidential election. At the next session, after the result of the late election was ascertained, the bill, after having undergone some considerable alterations, was passed into the law now under discussion. This law,

it is now said, is inviolable and irrevocable. It is said, the independence of the judge will be thereby immolated. Yes, sir, this law is now considered as the sanctuary of the principles of the last Administration, and the tenures of the judges as the horns of inviolability within that sanctuary. He said, we are now called upon to rally round the Constitution as the ark of our political safety. Gentlemen, discarding all generalising expressions, and the spirit of the instrument, tie down all construction to the strict letter of the Constitution. He said, it gave him great pleasure to meet gentlemen on this ground; and the more so, because he had long been in the habit of hearing very different language from the same gentlemen. He had long been in the habit of hearing the same gentlemen speak of the expressions of "the common defence and the general welfare," as the only valuable part of the Constitution; that they were sufficient to obliterate all specifications and limitations of power. That the Constitution was a mere nose of wax, yielding to every impression it received. That every "opening wedge" which was driven into it, was highly beneficial in severing asunder the limitations and restrictions of power. That the republicanism it secured, meant anything or nothing. It gave him therefore, great pleasure at this time to obey the injunctions of gentlemen in rallying round the Constitution as the ark of our political safety, and of interpreting it in by the plain and obvious meaning and letter of the specified powers. But, he said, as if it was always the unfortunate destiny of these gentlemen to be upon extremes, they have now got round to the opposite extreme point of the political compass, and even beyond it. For, he said, they not only tie down all construction to the letter of the instrument, but they tell us that they see, and call upon us also to see written therein, in large capital characters, "the independence of judges;" which, to the extent they carry the meaning of the term, is neither to be found in the letter or spirit of that instrument, or in any other political establishment, he believed, under the sun. Mr. G. said he rejoiced that this subject was now to be discussed; he thought the crisis peculiarly auspicious for the discussion. He said the European world, with which the United States have the most relations, is now tranquilized. The tremendous scenes of blood and revolution which had agitated that portion of the globe, had at length subsided into profound peace; and had left mankind in silent amazement, to retrospect the wonderful events which were passed; and he hoped, with calm deliberation, to improve the lessons they had furnished for the benefit of mankind in time to come. The interests and sympathies, which the people of the United States felt in these events, no longer turn their attention from their internal concerns; arguments of the highest consideration for the safety of the Constitution and the liberty of the citizens, no longer receive the short reply, French partisans! Jacobins! Disorganizers! And although the gentleman from North Carolina sees, or thinks he sees, the destructive spirit mount in

H. OF R.

Judiciary System.

FEBRUARY, 1802.

the whirlwind and direct the storm, let him be consoled by the information, "that all these, our actors, are mere spirits, and are dissolved into thin air." Yes, sir, these magical delusions are now vanished, and have left the American people and their Congress, in their real persons, and original American characters, engaged in the transaction of American concerns.

Upon taking a view of our internal situation, he observed, although party rage may not be done away, it may be said, its highest paroxysm is past. And although the gentleman from New York, (Mr. T. MORRIS) yesterday observed that the President had commenced a system of persecution, so ignorant, he said, he was of the existence of a such system, that he could not conceive to what the gentleman alluded. It is sometime, Mr. Chairman, since a member of this House, and sundry printers throughout the United States, have been amerced and imprisoned to appease the vengeance of an unconstitutional sedition act, merely for publishing their own sentiments, which happened to be unpalatable to the then existing Administration! It is sometime, sir, since we have seen judges, who ought to have been independent, converted into political partisans, and like Executive missionaries, pronouncing political harangues throughout the United States! It is sometime, sir, since we have seen the zealous judge stoop from the bench to look out for more victims for judicial vengeance! It is sometime since we have seen the same judicial impetuosity drive from the bar the most respectable counsel, who humanely proposed to interpose between a friendless and unprotected man and the judicial vengeance to which he was doomed! It is sometime, sir, since we have seen the same judicial zeal extending the provisions of the sedition act, by discovering that it had jurisdiction of the *lex non scripta*, or common law! It is sometime since we have seen the Chief Executive Magistrate dooming to humiliation "in dust and ashes" a great portion of the American people! Yes sir, these terrific scenes are past. These noisy declamations, and this judicial zeal, are hushed into silence by the audible pronouncement of the public will. He said, we may even indulge the hope, Mr. Chairman, that our pulpits will not much longer be converted into political forums; and that the meek and humble teachers of the Christian faith, instead of stirring up all the angry and destructive passions of the human mind, will ere long once more condescend to teach those lessons of humility, forbearance, and toleration, taught them by their Divine Preceptor. Those precepts so essential to the discovery of truth, by predisposing the mind to deliberation and reflection.

The present Executive, pursuing the general good, and supported by the general confidence, stands not in need of these artificial aids. He invites inquiry. He knows that the highest encomium which can be bestowed upon his administration would flow from a correct understanding of his motives and his conduct. Instead of calling in the aid of sedition acts to the defamatory scribblers, who appear to increase in numbers and

in impudence in proportion to the desperation of their cause and their security from punishment, he has said, "Let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it." Under these auspicious circumstances, he said, he proceeded to the discussion of the important question before us with pleasure, conscious that he was subject to error, and knowing that if he did err, it was his interest to be corrected; confident, also, that there was a mass of intelligence and calm reflection at this time in the people of the United States, competent to detect the error and apply the corrective. Impressed with these sentiments, he differed widely in opinion with the gentleman from North Carolina, (Mr. HENDERSON,) who had said, that "If the bill upon your table should pass into a law, he would not heave a sigh or drop a tear upon the instantaneous demolition of the whole Constitution. The sooner it was done the better." Sir, this gentleman and his associates in political opinions have termed themselves "lovers of order." Is this an evidence of the practice we are to expect from those gentlemen, under their professions so long and so loudly made to the people of the United States? Cannot that gentleman find some reason to regret that sentiment in the confidence due to the intelligence and patriotism of a great portion of his fellow-citizens who differ with him on that point? Or do the gentleman and his political associates claim, with presumptuous vanity, not only the appellation of the exclusive "lovers of order," but also the monopoly of all the intelligence and patriotism of the nation? He had too much respect for gentlemen to suppose they would place their pretensions on this ground. He begged pardon of the Committee for this digression; he had been impelled to it from the course the debate had taken, and particularly from the indecorous attacks made on the President of the United States.

He said he would now proceed to examine whether the repeal of the Judiciary law of the last session of Congress would in any respect violate that salutary and practicable independence of the judges which was secured to them by the Constitution. He said the term *independence of Judges or of the Judiciary department* was not to be found in the Constitution. It was therefore a mere inference from some of the specified powers. And he believed in the meaning of gentlemen, and to the extent they carry it, that the term is not to be found either in the spirit, general character, or phraseology, of any article or section of the Constitution. He meant to give the Constitution the most candid interpretation in his power, according to the plain and obvious import of the English language. He should discard, in his interpretation, the terms "common defence and general welfare," which had been resorted to by some gentlemen. He considered these words as containing no grant of power whatever, but merely the expression of the ends or objects to be effected by the grants of specified powers. He therefore protested against drawing any aid whatever from them in his construction of the instrument. He

FEBRUARY, 1802.

Judiciary System.

H. OF R.

said he had read through the whole Constitution, to enable him to form his opinion upon this question, for fear there might be in some hidden corner of it some provision which might demonstrate the unconstitutionality of the present bill; and if so, (although he should lament such a provision,) he would instantly give up the bill. But his researches had terminated in a different result. He said he found, from the general character of the Constitution, that the general will was its basis, the general good its object, and the fundamental principle for effecting this object was the responsibility of all public agents, either mediately or immediately to the people. He said the context of the Constitution would demonstrate the two first points, which he begged to read:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Here we find the Constitution founded upon the will of the people, and the object declared to be the good of the people. Through the whole body of the Constitution may be discerned the responsibility of all public agents, either mediately or immediately, to the people. This responsibility results, first, from the division of authority into different departments; secondly, from a specification and limitation of the authorities of all and each of the departments; thirdly, from periodical appointments of the public agents. The first clause declares there shall be a Congress, to whom the business of legislation is confided. This Congress is to consist of a House of Representatives, to be chosen by the people immediately, and responsible to them at the end of every two years; and a Senate, to be chosen by the Legislatures of the different States, who are chosen by the people—one-third of the Senators to be chosen every two years, and responsible at the end of every six years. The Executive power is vested in a President, who is chosen by Electors, who are chosen for the express purpose by the people, and responsible at the end of every four years. The President may be considered as immediately responsible to the people, although chosen through the medium of Electors; because it is found, in practice, that the Electors are constrained to avow the vote they intend to give before they are chosen, and the people have generally made their elections with a view to that object.

Thus, then, are formed two departments, their powers specified and defined, the times for extending their powers fixed, and indeed a complete organization for the execution of their respective powers, without the intervention of any law for that purpose. A third department, to wit: the Judiciary department, is still wanting. Is that formed by the Constitution? How is that to be formed? It is not formed by the Constitution. It is only declared that there shall be such a department; and it is directed to be formed by the other two departments, who owe a responsibility

to the people. Here there arises an important difference of opinion between the different sides of this House. It is contended on one side that the Judiciary department is formed by the Constitution itself. It is contended on the other side, that the Constitution does no more than to declare that there shall be a Judiciary department, and directs that it shall be formed by the other two departments, under certain modifications. Article third, section first, the Constitution has these words: "The Judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish." Here, then, the power to ordain and establish inferior courts is given to Congress in the most unqualified terms, and also to ordain and establish "one Supreme Court." The only limitation upon the power of Congress in this clause, consists in the number of supreme courts to be established; the limitation is to the number of one, although that is an affirmative and not a negative expression. The number of judges, the assignment of duties, the fixing compensations, the fixing the times when, and places where, the courts shall exercise their functions, &c., are left to the entire discretion of Congress. The spirit, as well as the words of the Constitution, are completely satisfied, provided one Supreme Court be established. Hence, when all these essential points in the organization and formation of courts is intrusted to the unlimited discretion of Congress, it cannot be said that the courts are formed by the Constitution. For further restraints, therefore, upon the discretion of Congress, the remaining part of the same section must be consulted. Here he begged leave to remark, that he had often felt a veneration for the wisdom of the sages who formed this Constitution; considering the difficulties they had to encounter, resulting from the various local prejudices and local interests of the different parts of the United States, and the vast variety of opinions which the subject presented, it was almost wonderful to conceive how they should have hit upon a system so admirably calculated to protect and to promote the general interests, when administered according to its original meaning and intention. He could not go so far as to say it was perfect. He admitted, like other human productions, it was stamped with the common fallibility of man. That he wished, however, to see no radical changes in its principles. He wished to hand it down to posterity with those amendments only which experience should suggest, and which would grow out of the continually varying state of the nation. He said it was not only remarkable for the wisdom of its arrangements, but the correct and technical mode of expression. The part of the section now to be examined, was an example of the justice of both these remarks. The words are, "the judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

The first part of the sentence respects the relationship between the Executive and the Judiciary departments. It respects judges or officers of the courts who are appointed by the President. The last part of the sentence respects the relationship between the Legislative and Judiciary departments. It respects the creation of offices, the fixing the compensation of the officers or judges, and their continuance in office. These are the peculiar attributes of the Legislative department. Accordingly, the most correct and technical words are used in relation to both these objects. The term "hold their offices during good behaviour," relates merely to the Executive department. The term "hold," is the common technical word used to convey the idea of tenure. Tenure requires two parties. The one granting, the other holding or receiving the grant. Let the inquiry be made, of whom do the judges hold? The Constitution furnishes the answer, of the President. One of the most obvious rules in the construction of instruments of writing is, that the whole of it must be taken together, and not one particular part by itself. The following words will be found in the second section of the second article of the Constitution: "And he (to wit, the President) shall nominate, and, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." In the third section of the same article, are these words: "And shall (to wit, the President) commission all the officers of the United States." These three sentences contain the relationship between the Executive and Judiciary departments, so far as respects the objects of the present discussion.

To ascertain the real meaning and import of these sentences, they should be read in connexion with each other, excluding therefrom all intermediate words not immediately bearing on the subject. In that case the Constitution would read thus: "He (to wit, the President) shall nominate and appoint the judges of the Supreme Court, and all other officers of the United States, and shall commission all the officers of the United States. The judges both of the supreme and inferior courts shall hold their offices during good behaviour." It may now be asked, if this case of the judges of the supreme and inferior courts be not an obvious exception out of the general Presidential discretion of appointing and commissioning all officers of the United States during pleasure? After the Government has been in operation above twelve years, and the principle of commissioning all Executive officers during pleasure, has been practised upon during the whole of the period by the Executive, as well as the Legislative department, the propriety of that practice is for the first time now become questionable. It is said that the right to commission during pleasure, is by implication. It is readily admitted that there are no express words in the Constitution to that effect; but the inference from the

words which are there, is almost as strong as the words themselves, if they had been inserted. The President is authorized, without limitation, to "commission all the officers of the United States." The question arises, by what tenure? The reply is, according to his pleasure or discretion. It was not difficult to foresee, that if the President was fully empowered to commission as he pleased, he would please to commission during his pleasure. The Legislature has no more control over an officer who holds an Executive commission during the pleasure of the President, than over a Judicial officer holding his office during good behaviour. The remedy given by the Constitution being the same in both cases, to wit: impeachment. Nor is there any reason why the office of the one should be less subject to the discretion of the Legislature, than the office of the other; and it seems to be universally agreed, that although the Legislature cannot deprive an Executive officer of his office in any other way than by impeachment, during the continuance of such office, yet the office itself is always subject to be abolished. The same reasoning will hold with equal force respecting a judge and a Judicial office. The reason why the Executive is proscribed from the removal of a judge, is to secure to the judge a complete independence of the President, who is not responsible for the discharge of Judicial duties; but the removal is perfectly correct in the case of an Executive officer, because the President is highly responsible for the due discharge of Executive duties. The Legislature is not responsible for either, and of course stands in the same Constitutional relation to both. This appears obvious from furnishing to the Legislature the same means of removing both, as will appear by the fourth section of the second article, in the following words: "The President, Vice President, and all civil officers of the United States, shall be removed from office by impeachment for, and conviction of treason, bribery, or other high crimes or misdemeanors." He now begged to call the attention of the Committee particularly to the last clause of the sentence, which ascertains the Constitutional connexion between the Legislative and Judicial departments, so far as respects the limitation of the Legislative, in the exercise of the power committed to it, for the organization of the Judicial department. He should place particular emphasis on these words of the Constitution in the exposition he proposed to make. The words are: "And shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office." The first part of this section having given to Congress the power of creating courts, ascertaining the number of judges, &c., these last words may be considered as containing explanations and limitations of the general power of Congress, as was the foregoing part of this sentence a limitation of the general Executive power. And accordingly the most correct terms are used for limiting Legislative discretion, and explaining its objects; according to the words of this sentence, the judge is to receive a

FEBRUARY, 1802.

Judiciary System.

H. OF R.

compensation for his services. To whom are these services to be rendered? To the people, for the benefit of the people. Who is to judge of the necessity or utility of these services? The Constitution has ordained, that Congress, or in other words, the Representatives of the people, shall be the tribunal. Suppose there should be no services required, none for the judge to perform, and that Congress should so think and determine: Is the judge entitled to compensation? He is not. The condition of service for the benefit of the people, is the express consideration upon which the compensation accrues. No service is rendered, the competent tribunal says, there is none required, of course no compensation accrues. The judge is entitled to receive none. On this point, an obvious and most important difference of opinion exists between the two sides of the Committee. On one side it is contended, that the office is the vested property of the judge, conferred on him by his appointment, and that his good behaviour is the consideration of his compensation; so long, therefore, as his good behaviour exists, so long his office must continue in consequence of his good behaviour, and that his compensation is his property in virtue of his office, and therefore cannot be taken away by any authority whatever, although there may be no service for him to perform. On the other side, it is contended that the good behaviour is not the consideration upon which the compensation accrues, but services rendered for the public good; and that if the office is to be considered as a property, it is a property held in trust for the benefit of the people, and must therefore be held subject to that condition, of which Congress is the Constitutional judge. Mr. G. said, considering the boundary line between these conflicting opinions to be the boundary line between the offices held for public utility, and offices held for personal favor, he could not bestow too much attention upon this part of the discussion; for if the construction gentlemen contend for should prevail, in vain have the framers of the Constitution, with so much jealous circumspection, erected so many ramparts against the introduction of some of these offices in the Government of the United States. A sinecure office is an office held without the condition of service; often for past services already compensated; often for present favor, without the condition of any service. For the purpose of excluding from the Federal Government all sinecure offices, the sages who formed the Constitution have through every part of it connected services and compensation, and they ought never to be separated in construction. The sixth section of the first article is in these words: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law," &c., and so far has this principle of the rendition of service been carried, that the service of the Senate and Representatives is to be rendered every day, and unless they do daily render service, they are not entitled to their day's compensation. In the first section of the second article of the Constitution, are these words: "The President shall, at stated times, re-

ceive for his services a compensation," &c. In the forty-first section of the act under which the judges claim their compensation, are these words: "That each of the circuit judges of the United States, to be appointed by virtue of this act, shall be allowed as a compensation for his services," &c. These expressions all demonstrate the importance of coupling the service and compensation of office. But the jealous caution of the framers of the Constitution did not stop at choosing the best affirmative expression for excluding this doctrine of sinecure offices, they also applied negative restraints.

In the ninth section of the first article of the Constitution, are these words, "No money shall be drawn from the Treasury but in consequence of appropriations made by law." In the same section, "No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign State." If then services rendered for the public benefit, be the essential consideration, upon which the compensation does accrue to the judges; if the Congress be the proper tribunal for pronouncing upon the necessity or utility of such service, and if they decide that no such service is necessary or useful; the judge sustains no injury in not receiving the compensation, because he does not comply with the condition on his part; nor does he sustain a hardship thereby, because it must be presumed that he understood the second conditions attached to his office at the time of his acceptance. It has been admitted by all gentlemen, that Congress is the Constitutional tribunal for deciding respecting the services to be performed. They admit that Congress may modify the courts, diminish or add to their duties, alter the terms of their sessions, or make any other arrangements respecting them which do not go to take away or diminish their compensations. It is to be observed that there is not one of these powers specified in the Constitution; they are therefore necessary inferences from the paramount power "to ordain and establish," and the power of repeal, or to take away all the services to be performed, is as necessary an inference as either of the others, and has uniformly resulted from every other specified power in the Constitution. From this part of the sentence, therefore, it is deducible, that the only restraint upon the general power given to Congress in the first part of the section to ordain and establish courts, is, that the compensations of the judges should not be lessened during their continuance in office; not during their good behaviour. And in this part of the sentence the correct phraseology of the Constitution is worthy of observation. In speaking of the Executive attribute, to wit, the appointing and commissioning officers, the term *good behaviour* is used. In speaking of the Legislative attribute, to wit, the creation of the offices and fixing compensations, the term *during their continuance in office* is used. The reason for this variation of expression is ob-

vious. It was known that the office might be discontinued, and the judge continue to behave well; the limitation was therefore applied to the office, and not the good behaviour, because if the office should be discontinued, which is clearly implied in this expression, it was not the intention of the Constitution that the compensation should be received, no service in that event being to be rendered. From this interpretation of the Constitution, all of the departments are preserved in the due exercise of their respective functions for the general good, without any of the mischievous and absurd consequences resulting from the opposite construction. It is admitted that the first part of this section expressly vests Congress with the general power to ordain and establish courts; and, if there had been no other restriction, the consequent power to unordain, or abolish. The restriction relied upon is not a restriction in express words: there are no words in the Constitution prohibiting Congress from repealing a law for organizing courts; the restraint contended for, therefore, is by implication, and that implication, to say the least, not expressly connected with any Legislative attribute. Is it right, is it a correct interpretation, that when a power is given in express words for the most important purposes, that it should be restrained or prohibited by implication? Can so much inattention and folly be attributed to the framers of the Constitution, as would result from the supposition that if it was their intention that a law growing out of one of the specified powers, in contradistinction to all others, should be irrevocable when once passed, that so extraordinary a principle would be left to mere implication? Such a supposition would be the highest injustice to the superior intelligence and patriotism of those gentlemen, manifested in every other part of the instrument. No, sir, they would have made notes of admiration: they would have used every mark, adopted every caution, to have arrested and fixed the attention of the Legislature to so extraordinary a principle.

They would have said, Legislators! be circumspect! Be cautious! Be calm! Be deliberate! Be wise! Be wise not only for the present, but be wise for posterity! You are now about to tread upon holy ground. The law you are now about to pass, is irrevocable! Irrevocable! We are so enamoured with the salutary and practical independence of the English Judiciary system, that in infusing its principle into our Constitution, we have stamped it with the proverbial folly of the Medes and Persians! If this principle had been introduced into the Constitution in express words, it would have formed an unfortunate contrast to all other parts of the instrument; yet gentlemen make no difficulty in introducing that principle by construction, which would have appeared so stupid and absurd if written in express words in the body of the instrument. But there is no such language in the Constitution. Let us see what is the language of that instrument. "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and es-

tablish." Here, then, instead of cautioning the Legislature that a law for the organization of courts, when passed, can never be repealed, it contains an invitation to a revision from time to time. It contains an intimation, that the subject is new and difficult, and an injunction to ordain and establish your courts from time to time, according to the results, which an experience of the system alone could suggest. The gentleman from Pennsylvania, (Mr. HEMPHILL,) observed that the character of irrevocability was not exclusively attached to this law, and attempted to furnish instances of other laws of the same character. He instanced a law for the admission of a new State into the Union.

The gentleman from Kentucky (Mr. DAVIS,) had given a proper reply to that remark; the strongest instance the gentleman gave, was of a law executed. After the new State is admitted into the Union, in virtue of a law for that purpose, the object of the law is answered. The State admitted has no stipulated duties to perform on its part, no services to render; in the case before the Committee the law is in a state of execution, and the judges have services to render on their part which the competent tribunals may determine to be neither useful nor necessary. A law for the appropriation of money to a given object, may be adduced as an instance; the money is applied; its object is answered; the law may be said to be irrevocable, or, in other words, the repeal would produce no effect. That is not the case of the law in question. Mr. G. said he had no doubt but that the framers of the Constitution had particular reference to the British act of Parliament of William the III. for the establishment of the independence of the judges in that country, in framing the section for the establishment of the Judicial department in the United States; and it is not a little remarkable, that whilst gentlemen in one breath speak of the independence of the English judges, as the boast and glory of that nation, in the next breath they tell us that by the repeal of the present act, the independence of the judges here would be immolated. Let this subject be examined. In the third chapter of the first book of Blackstone's Commentaries, the independence of the English Judiciary is fully explained. He begged to read the exposition of that commentator on that subject.

"And, in order to maintain both the dignity and independence of the judges of the superior courts, it is enacted by the statute, 13 W. III. c. 2, that their commissions shall be made (not, as formerly, *durante bene placito*, but) *quam diu bene se gesserint*, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both Houses of Parliament. And now, by the noble improvements of that law in the statute of Geo. III. c. 23, enacted at the earnest recommendation of the King himself, from the Throne, the judges are continued in their offices during their good behaviour, notwithstanding any demise of the Crown, (which was formerly held immediately to vacate their seats,) and their full salaries are absolutely secured to them during the continuance of their commissions. His Majesty having been pleased to declare, that "he looked upon the independence and uprightness of the judges, as essential to the impartial

FEBRUARY, 1802.

Judiciary System.

H. OF R.

administration of justice; as one of the best securities of the rights and liberties of his subjects; and as the most conducive to the honor of the Crown."

Now, sir, under the doctrine contended for by the repeal of this law, let us see whether the judges of the United States are not more independent than the judges of England. In the first place, Congress have the power of originating, abolishing, modifying, &c., the courts here. The Parliament in England have the same power there. Congress cannot remove a Judicial officer from his office so long as the office itself is deemed useful, except by impeachment, two thirds of the Senate being necessary to a conviction. In England, judges can be removed from their offices, although the offices may be deemed useful, by an address of a majority of the two Houses of Parliament. Here then is one essential advantage in favor of the independence of the judges of the United States. Congress cannot diminish the compensation of the judges here during their continuance in office. In England, the Parliament may diminish the compensation of the judges at their discretion, during their continuance in office. Here then, is another obvious advantage in favor of the independence of the judges of the United States; whence is it, then, that we hear of the independence of the English Judiciary, as being the boast and glory of that country, and with justice too, and at the same time hear the cry of the immolation of the independence of the judges of the United States, when, under the interpretation of the Constitution by the favorers of the repeal, the judges here are more independent than the English judges? It can have no other object than to excite a popular clamor, which, if excited at all, can have only a momentary effect, and will be dissipated as soon as the subject shall be thoroughly examined and understood. But it appeared to him, that if gentlemen really do value the independence of the judges, they have taken an unfortunate ground in the interpretation of the Constitution. Under their construction the judges may be placed not only in a dependent, but a ludicrous point of view.

Gentlemen admit that Congress may constitutionally increase or diminish the duties of judges; give or take away jurisdiction; fix the times of holding courts, &c., saving therefrom the salaries of the judges. Under this admission, Congress may postpone the sessions of the courts for eight or ten years, and establish others, to whom they could transfer all the powers of the existing courts. In this case, the judges would be held up to the people as pensioners, receiving their money and rendering no service in return; or Congress might convert them into mere courts of piepoudre, assigning them the most paltry duties to perform, and keep them continually in session, in inconvenient places; whilst new courts could be erected to perform all the essential business of the nation. This would be taking down the high pretensions assigned to the judges by the gentleman from North Carolina. (Mr. HENDERSON,) of being formed into a permanent corps for the purpose of protecting the people against their worst enemies,

themselves; and degrading them into pitiful courts of piepoudre, rendering little service and receiving large compensations. And this would be the case, if party purposes were the object, and not the general good. According to his construction, these absurd results could not take place, unless by a virtual breach of the Constitution. Because, he contended, that service and compensation were correlative terms; and that there ought always to be a due apportionment of service to compensation. This he considered as the plain and sound interpretation of the Constitution, and the moment it is departed from, infinite absurdities ensue. He intended to have taken another view of this subject, as it respects the relative influence of the law of the last session, and the proposed repeal upon this question; but the gentleman from Massachusetts (Mr. BACON) has put this subject in so much stronger point of view than he could do, that he would refer to his remarks thereupon, observing only that he had no doubt but that the law of last session, now proposed to be repealed, was in every respect as much opposed to the doctrine of gentlemen, as the contemplated repeal could be. The sections of the law particularly alluded to, are the twenty-fourth, in these words, "and be it further enacted, that the district courts of the United States, in and for the districts of Tennessee and Kentucky, shall be and are hereby abolished," and the twenty-seventh, in these words, "and be it further enacted, that the circuit courts of the United States, heretofore established, shall cease and be abolished."

He said he would now examine some of the consequences of the doctrine against the repeal, and see if it can be recommended from that consideration. First, as it respects the Judicial department. Its first effect is to produce a perpetual increase of judges and salaries, without any practicable mode of reducing them. This is inconsistent both with the general sentiment of the people and the Constitution, that requires that no compensation shall be received, without an equivalent service rendered.

The gentleman from Pennsylvania supposes that there would be as much danger that a corrupt legislature would give an enormous sum, say two hundred thousand dollars, to one judge, as to increase too great a number of judges. Yet he says the Legislature is restrained in express words from lessening the salary, and infers from that circumstance that it is also restrained from lessening the number of officers. Mr. G. made from it the direct contrary inference. If there be neither the power to lessen the sum nor abolish the office, there is no remedy for the evil the gentleman suggests. It is an incurable mischief. There is, therefore, a necessity for a power to abolish the office, as a remedy against the enormous abuse of giving so large a sum without the rendition of equivalent service. And as express words were deemed necessary to limit the discretion of Congress against diminishing the sum, so would there have been greater necessity for express words to limit the discretion of Congress against the abolition of unnecessary offices.

Mr. G. said, that according to a sound rule of interpretation, where a general grant of power is made, and one limitation to the general power is expressed, the expression of that limitation is an exclusion of all intention to make any other limitation whatever, by inference or implication. And this rule will apply to all other cases put by gentlemen, where there is an express limitation of Legislative authority. But the most important consequence from this doctrine is, that it erects the judges into a body politic and corporate, in perpetual succession, with censorial and controlling powers over the other departments. And for what purpose? The gentleman from North Carolina (Mr. HENDERSON) has informed us, "to protect the people against their worst enemies," themselves! This is the real exposition of the object in very few but emphatical words. As the inducement to the adoption of this principle, gentlemen have reminded us of the fate of a foreign country, of the violent passions which agitate popular assemblies, of the age, experience, the unassuming talents and unambitious virtue of judges. He said the judges were selected from their fellow-citizens, and he presumed possessed the same human propensities. He said all men love power, and in general, those love it best who know best how to use it. Let us apply this remark to the judges of the United States.

Very shortly after the establishment of the courts, the judges decided that they had jurisdiction over the States in their sovereign capacity. Did this, in the judges, seem unambitious? The States thought it did not. It happened that during the Revolutionary war, the State of Massachusetts had issued certain obligatory bills, which were made transferable, and which were outstanding without any provision for their payment; suits were instituted on these bills. The court determined to bring the great State of Massachusetts, and not Virginia, on its knees, not at the feet of justice, but policy. Upon the representation of Massachusetts, an amendment was made to the Constitution of the United States, declaring that the Constitution should not be construed to extend to authorizing the courts to arraign and pronounce judgment against States which had not consented to give up their sovereignty. Thus this unambitious project of the judges was prostrated by a Constitutional interposition. He read the amendment, in the following words: "The judicial power of the United States shall not be construed to extend to 'any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.'" The judges have determined that they are judges in the last resort upon the constitutionality of your laws. He proposed not to discuss this question, because he did not think it pertinent to the question before us. He only mentioned it to show their unlimited claims to power. The judges have determined that their jurisdiction extends to the *lex non scripta*, or rather to the *lex non descripta*, or common law. Does this, in the judges, seem unambitious? This law pervades the whole municipal regulations of

the country. It is unlimited in its object, and indefinite in its character. Legalize this unassuming claim of jurisdiction by the judges, and they have before them every object of legislation. They have sent a mandatory process, or process leading to a mandamus, into the Executive cabinet, to examine its concerns. Does this, in the judges, seem unambitious? Now, sir, examine and combine the extraordinary pretensions to power, legalize them, and you have precisely that body politic and corporate which gentlemen deem so important in the United States "to protect the people from their worst enemies—themselves!" He should not resort so frequently to this expression, but that he did consider it as the candid and correct exposition of the object of gentlemen opposed to the repeal. It was the doctrine of irresponsibility against the doctrine of responsibility. The latter, he had endeavored to show, characterized the Constitution of the United States. It was the doctrine of despotism, in opposition to the representative system. It was an express avowal, that the people were incompetent to govern themselves. This he believed to have been the great characteristic difference, from the commencement of the administration of the Government to the present day. If, indeed, there be a political corps necessary to interpose between the people and themselves, he considered the Judiciary corps, supported by the doctrines on this floor, well calculated to effect that object.

He said he would now examine the consequences of the doctrine against the repeal, as it respected the Legislature. He said it would have a direct tendency to impair the responsibility of the Representatives to the people. He could not illustrate this observation better than by giving the history of the law proposed to be repealed.

The first bill for changing the organization of the courts of the United States was reported to the House of Representatives the 11th of March, 1800; after undergoing some discussion and amendment, it was recommitted and reported again the 31st of March, 1800; on the 14th of April it was postponed by a majority of two votes. At this time the Presidential election was approaching, and the result uncertain. The bill upon which the law in question was founded, was reported to the House of Representatives the 19th December, 1800, and passed that House the 20th January, 1801. It was read in the Senate the 21st of January, 1801, and passed the 7th of February, 1801. At this time the Presidential election, so far as it respected the then existing President, was ascertained.

Mr. G. said, he proposed to be particular in ascertaining the facts respecting the passage of this law and its execution, because gentlemen had complained that rumors had gone into circulation respecting its passage, and the appointments under it, not warranted by the facts; a sense of justice had therefore induced him to make the strictest inquiry into the dates and facts, and the result of that inquiry, upon his mind, had been as unfavorable to its advocates as any impression which had been made by the rumors complained of. He

FEBRUARY, 1802.

Judiciary System.

H. OF R.

said, at the time of passing the law, no complaints had been presented to Congress against the competency of the former system; not even a memorial from the bar of Philadelphia. He believed the former system to have been amply competent. The business, indeed, had very much declined; he observed that, in the Spring of 1799, the whole number of causes instituted, exclusive of Maryland and Tennessee, amounted to seven hundred and three, besides seventy-eight criminal prosecutions in Pennsylvania. In the Fall of 1800, there were instituted only three hundred and fifty-five; without any information, however, on this point, the law was passed. On the 13th of February, 1801, it was approved by the President. On turning to the Journals of that day, it will be found that the House of Representatives was not engaged in the ordinary business of the session; they were engaged in the extraordinary business of electing a President.

In a note made on that day on the Journals will be found a Message from the President in these words: "A Message was received from the President of the United States by Mr. Shaw, his Secretary, notifying that the President did this day approve and sign an act which originated in the House of Representatives, entitled 'An act to provide for the more convenient organization of the courts of the United States.'" Upon examining the Journals themselves, he said, he found an entry in these words: "The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-ninth ballot; and, upon examination thereof, the result was declared to be the same." Mr. G. said, need I remind gentlemen, now present, who were agents in the exciting scenes, of the extraordinary situation of Congress at that moment? When in the House of Representatives the ordinary business of legislation was suspended, a permanent session decreed; when lodging and subsistence were furnished the members within the walls of the Chamber; when even a sick bed was introduced to enable its patient to discharge a sacred duty. Need I awaken the recollection of our fellow-citizens, who were looking with indignant anxiety on the awful scene; beholding their representatives, urged by the most tempestuous passions, and pushing forward to immolate the Constitution of their country? No, sir, the awful scene is freshly remembered! And what was its object? To prevent the fair and known expression of the public will in the highest function it has to perform—in the choice of the Chief Executive Magistrate of the nation. In this state of things, when all confidence amongst the members of this House was lost, in the highest paroxysm of party rage, was this law ushered into existence. And now its advocates gravely tell us to be calm—to guard against the danger of our passions. They tell us, at the same time, that the law they have passed is sacred! inviolable! irrepealable! Does it merit this extraordinary character from the circumstances which accompanied its passage? It does not.

Let us examine how this law was carried into

effect. Members of the Legislature who voted for the passage of the law were appointed to offices, not indeed created by the law, the Constitution having wisely guarded against an effect of that sort, but to judicial offices previously created, by the removal, or what was called *the promotion* of judges from offices they then held, to the offices newly created, and supplying their places by members of the Legislature who voted for the creation of the new offices. In this substitution, however, it appears that no respect was paid to another provision of the Constitution. The sixth section of the first article of the Constitution contains these words: "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office." If vacancies had existed in the previously existing judicial establishments, the appointments of the members of the Legislature might not be considered as a direct breach of this provision in the Constitution; but this was not the fact, no vacancies did exist. It was necessary to make provision for members voting for the law that vacancies should be made by the removal or promotion of the then existing judges. This was done under this authority in the Constitution—second section, second article: and he, to wit, "the President of the United States shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors and other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States," &c. Again: "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of the next session." How did the then President exercise the power in the present case? He did not wait until the vacancies should happen. He attempted to make vacancies by what he called the promotion of judges, although they held their commissions of him "during good behaviour;" and, without waiting to know whether the judges would accept the promotion or not, upon which event alone a vacancy could accrue, he proceeded to appoint and actually commission members of the Legislature to offices then actually held by other commissions granted to other persons. What was the effect of this procedure? That two persons held commissions to perform the same duties, although one person only was authorized by law to discharge those duties, whilst the office where the promotion was refused remained vacant. This was actually the case in several districts of the United States. This subject will be put into a still stronger point of view by examining the Journals of the Senate, which he was sorry to do for that purpose. When discussing the bill in question in the Senate, he found this entry on their Journals, "on motion to strike out the whole

' of the bill after the words 'from and after,' section first, line second, for the purpose of inserting as follows, to wit, a substitute for the bill." On the question to agree to this motion, it passed in the negative—yeas 13, nays 17. He observed among the nays the names of Mr. GREEN, of Rhode Island, and Mr. READ, of South Carolina. Both these gentlemen received appointments in virtue of the promotion of judges under this law. If these gentlemen had voted on the opposite side of the question, the law would never have been in existence. He mentioned this circumstance not to impugn the motives of any gentleman, but to demonstrate the temptation held out to the members of the Legislature under the doctrine contended for against the repeal of this law. The refusal of the present President to correct what was called a mistake in Mr. GREEN's appointment having excited some clamor, it was necessary to put that subject in a correct point of view. It seems, that in filling up Mr. GREEN's commission, the word "circuit," instead of the word "district," was inserted, it is presumed, by mistake. If the commission was intended for the circuit court, it was a breach of the Constitution in its most obvious letter. If it was intended for the district court, it was void *ab initio*: because, at the date of the commission, no vacancy had happened, and the President's right to appoint depended on that precedent condition, and he, therefore, in making the appointment, attempted to exercise a power he did not possess. It must be obvious to every gentleman that Mr. GREEN's accepting the commission, under all the incidents attending the case, could furnish but a negative recommendation of Mr. GREEN in his application for that or any other appointment. Upon a review of the history of the law in question, according to the doctrine of its advocates, the temptation to the Legislature to make permanent, irrevocable provision for themselves, must be obvious to every impartial observer. If, when a judicial establishment be once made, it becomes irrevocable, how easy would it be for a Legislature, combined with the Executive, to compensate themselves for the loss of the confidence of their constituents, by following the example before us? By erecting a new tier of judges, holding out to them additional emoluments, and by filling up the vacancies occasioned by their promotion with the members of the Legislature.

This operation would be most likely to take place when the Representatives had lost the confidence of their constituents, and of course less likely to be influenced by considerations of public good. Again, sir, the sinecure system thus established would have the advantage of all other similar systems existing in the world; because, if in other countries, the sinecure system has become oppressive to the people, they have the consolation to recollect, that the evil may be lessened by the competent authority; but, according to the doctrine upon which the system is bottomed in the United States, no remedy can be applied to the mischief by the union of all the responsible agents of the people. How, sir, would the framers of

our Constitution lament, after all the care and circumspection they had used to exclude this system entirely from the practical operation of the Government, that the Constitution itself should be made the instrument of its introduction, and its permanent irrevocable establishment! And this, too, at the moment of an expiring Administration, when the passions of men just parting from power were breaking down every impediment which stood in the way of attaining their object! Upon the whole, therefore, it appears, that this doctrine of the irrepealability of laws derives no consideration from the consequences which naturally flow from it.

Mr. G. said, that having exhausted so great a portion of the time and attention of the Committee in discussing the Constitutional question, which had been made the cardinal point in the debate, he proposed to confine himself to very few observations upon the expediency of the contemplated repeal. He said he took it for granted, that the former Judicial system was competent to the discharge of all the judicial business in the United States; but if that should be denied, he thought it demonstrable from the document before the Committee. The gentleman from Delaware (Mr. BAYARD) had intimated a doubt whether the President had acted correctly in favoring us with the document. He should only observe in reply, that the Constitution imposed a duty upon the President, from time to time, to give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He said that the number of suits in the courts of the United States must always be very small from the limited objects of their jurisdiction; this will appear by reading the second section of the third article of the Constitution, limiting their jurisdiction. The whole expense of the existing system is \$137,000, of which forty or fifty thousand may be attributable to the new system, the estimates differing between these two sums. Whether the expense be estimated either according to the service to be rendered, or by comparison with any other system, it appeared to him to be enormous. He examined the document before us by way of ascertaining the relative view of expense and service, and also the competency of the former system to the discharge of the business. He would not, however, be responsible for precise clerical accuracy in his addition, which has also been deemed a subject worthy of criticism against the President of the United States. But if it be within twenty-five per cent. of being correct, it will demonstrate, first, that the former courts were competent to the business; secondly, that the number of causes bear no proportion to the expense of the institution.

Mr. G. said he would present to the view of the Committee the whole number of causes instituted at the respective sessions of the courts, from the Spring of 1796 to the Spring of 1801. He had fixed upon the year 1796, because the business began then to increase under the influence of the British Treaty. In all the circuit courts of

FEBRUARY, 1802.

Judiciary System.

H. OF R.

the United States, except Maryland and Tennessee, the whole number of causes of every description instituted in the Spring of 1796, were two hundred and ninety-four; Fall, one hundred and ninety-two: 1797, Spring, four hundred and eighty-one; Fall, three hundred and ninety-seven: 1798, Spring, three hundred and twenty-five; Fall, three hundred and ninety-seven: 1799, Spring, seven hundred and three, exclusive of ninety-eight criminal prosecutions in Pennsylvania; Fall, four hundred and fifty-five: 1800, Spring, four hundred and fifty-one—seventy criminal prosecutions in Pennsylvania; Fall, three hundred and fifty-five: 1801, Spring, three hundred and fifty; making the common calculation of suits settled between the parties without trial, dismissions, abatements, &c., &c., and it would appear that the whole number of judgments against solvent persons would hardly compensate the expense of the institution. It also appears that the number of causes left to be tried could easily be decided by the six former judges.

Mr. G. said, upon looking over the number of suits in the Eastern circuit, it appeared to him strange, that the members representing that part of the country should insist upon increasing the expense of the system, when the courts have there scarcely any business to attend to; and that gentlemen in the Southern States, where the business was greater, should be willing to lessen the expense. He said he never heard the smallest complaint in the State he represented respecting the incompetency of the former courts to discharge the business in that State. He believed they had always gone through the docket, whenever they attended, and as far as his own observations went, that was the fact. He said, it appeared strange to him, that the new courts and new expenses should be called for in other parts of the United States, when the old courts were competent to the business in that State, where the business has been considerably more than in any other State, although it is now very much declined, and probably will decline still more. In the courts of Maine, West Pennsylvania, West Virginia, and West Tennessee, no suit at all had been instituted in June last.

Under the view of the subject thus presented, Mr. G. considered the late courts as useless and unnecessary, and the expense, therefore, was to him highly objectionable. He did not consider it in the nature of a compensation, for there was no equivalent rendition of service. He could not help considering it as a tribute for past services; as a tribute for the zeal displayed by these gentlemen in supporting principles which the people had denounced. He thought the federal maxim always was, "millions for defence, not a cent for tribute." He could not consent to tax the people even one cent, as a tribute to men, who disrespected their principles. Another objection he had to the new organization of the courts was, their tendency to produce a gradual demolition of State courts, by multiplying the number of courts, increasing their jurisdiction, making bonds or obligatory bills assignable, with the privilege of

bringing suits in the name of the assignee, &c., or as gentlemen say, bringing federal justice to every man's door; the State courts will be ousted of their jurisdiction, which he thought by no means a desirable event. Under this consideration alone, and under the conviction he felt of the inutility of the courts, he should vote for the repeal.

Mr. G. concluded by observing, that, upon the whole view of the subject, feeling the firmest conviction that there is no Constitutional impediment in the way of repealing the act in question, upon the most fair and candid interpretation of the Constitution:—believing that principles advanced in opposition, go directly to the destruction of the fundamental principle of the Constitution, the responsibility of all public agents to the people—that they go to the establishment of a permanent corporation of individuals invested with ultimate censorial and controlling power over all the departments of the Government, over legislation, execution, and decision, and irresponsible to the people; believing that these principles are in direct hostility to the great principle of Representative Government; believing that the courts formerly established, were fully competent to the business they had to perform, and that the present courts are useless, unnecessary, and expensive; believing that the Supreme Court has heretofore discharged all the duties assigned to it in less than one month in the year, and that its duties could be performed in half that time; considering the compensations of the judges to be among the highest given to any of the highest officers of the United States for the services of the whole year; considering the compensations of all the judges greatly exceeding the services assigned them, as well as considering all the circumstances attending the substitution of the new system for the old one, by increasing the number of judges, and compensations, and lessening their duties by the distribution of the business into a great number of hands, &c., while acting under these impressions, he should vote against the motion now made for striking out the first section of the repealing bill.

FRIDAY, February 19.

A petition of sundry citizens of Huntingdon county, in the State of Pennsylvania, was presented to the House and read, praying a revision and amendment of the act of Congress passed on the eighteenth of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend the act, entitled 'An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on that subject.'"—Referred to the Committee of the Whole House to whom was committed, on the twenty-sixth ultimo, the bill for revising and amending the acts concerning naturalization.

On motion made and seconded that the House do come to the following resolutions:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That

the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as part of the Constitution, to wit:

1st. That the State Legislatures shall, from time to time, divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States; and shall direct the mode of choosing an Elector of President and Vice President in each of the said districts, who shall be chosen by citizens having the qualifications requisite for Electors of the most numerous branch of the State Legislature; and that the districts, so to be constituted shall consist, as nearly as may be, of contiguous territory, and of equal proportion of population, except where there may be any detached portion of territory, not of itself sufficient to form a district, which then shall be annexed to some other portion nearest thereto; which districts, when so divided, shall remain unalterable until a new census of the United States shall be taken.

2d. That, in all future elections of President and Vice President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice President.

Ordered, That the said motion, together with the resolutions of the Legislature of the State of New York, proposing amendments to the Constitution of the United States, respecting the choice of a President and Vice President, which were read and ordered to lie on the table on the fifteenth instant, be referred to the Committee of the Whole House on the state of the Union.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the Whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States and for other purposes."

Mr. BAYARD.—Mr. Chairman, I must be allowed to express my surprise at the course pursued by the honorable gentleman from Virginia, (Mr. GILES,) in the remarks which he has made on the subject before us. I had expected that he would have adopted a different line of conduct. I had expected it as well from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he holds on the floor of this House, as from the professions of a desire to conciliate, which he has so repeatedly made during the session. We have been invited to bury the hatchet, and brighten the chain of peace. We were disposed to meet on middle ground. We had assurances from the gentleman that he would abstain from reflections on the past, and his only wish was that we might unite in future in promoting the welfare of our common country. We confided in the gentleman's sincerity, and cherished the hope, that if the divisions of party were not banished from the House, its spirit would be less intemperate. Such were our impressions, when the mask was suddenly thrown aside, and we saw the torch of discord lighted and blazing before our eyes. Every effort has been made to revive the animosities of the House, and inflame the passions of the nation. I

am at no loss to perceive why this course has been pursued. The gentleman has been unwilling to rely upon the strength of his subject, and has therefore determined to make the measure a party question. He has probably secured success, but would it not have been more honorable and more commendable to have left the decision of a great Constitutional question to the understanding, and not to the prejudices of the House? It was my ardent wish to discuss the subject with calmness and deliberation, and I did intend to avoid every topic which could awaken the sensibility of party. This was my temper and design when I took my seat yesterday. It is a course at present we are no longer at liberty to pursue. The gentleman has wandered far, very far, from the points of the debate, and has extended his animadversions to all the prominent measures of the former Administrations. In following him through his preliminary observations, I necessarily lose sight of the bill upon your table.

The gentleman commenced his strictures with the philosophic observation, that it was the fate of mankind to hold different opinions as to the form of government which was preferable. That some were attached to the monarchal, while others thought the republican more eligible. This, as an abstract remark, is certainly true, and could have furnished no ground of offence, if it had not evidently appeared that an allusion was designed to be made to the parties in this country. Does the gentleman suppose that we have a less lively recollection than himself of the oath which we have taken to support the Constitution; that we are less sensible of the spirit of our Government, or less devoted to the wishes of our constituents? Whatever impression it might be the intention of the gentleman to make, he does not believe that there exists in the country an anti-republican party. He will not venture to assert such an opinion on the floor of this House. That there may be a few individuals having a preference for monarchy is not improbable; but will the gentleman from Virginia, or any other gentleman, affirm in his place, that there is a party in the country who wish to establish monarchy? Insinuations of this sort belong not to the Legislature of the Union. Their place is an election ground or an alehouse. Within these walls they are lost; abroad, they have an effect, and I fear are still capable of abusing the popular credulity.

We were next told of the parties which have existed, divided by the opposite views of promoting Executive power and guarding the rights of the people. The gentleman did not tell us in plain language, but he wished it to be understood, that he and his friends were the guardians of the people's rights, and that we were the advocates of Executive power.

I know that this is the distinction of party which some gentlemen have been anxious to establish; but this is not the ground on which we divide. I am satisfied with the Constitutional powers of the Executive, and never wished nor attempted to increase them; and I do not believe that gentlemen on the other side of the House ever had a serious

FEBRUARY, 1802.

Judiciary System.

H. OF R.

apprehension of danger from an increase of Executive authority. No, sir, our views as to the powers which do and ought to belong to the General and State governments, are the true sources of our divisions. I co-operate with the party to which I am attached, because I believe their true object and end is an honest and efficient support of the General Government, in the exercise of the legitimate powers of the Constitution.

I pray to God I may be mistaken in the opinion I entertain as to the designs of gentlemen to whom I am opposed. Those designs I believe hostile to the powers of this Government. State pride extinguishes a national sentiment. Whatever is taken from this Government is given to the States.

The ruins of this Government aggrandize the States. There are States which are too proud to be controlled; whose sense of greatness and resource renders them indifferent to our protection, and induces a belief, that if no General Government existed, their influence would be more extensive, and their importance more conspicuous. There are gentlemen who make no secret of an extreme point of depression, to which the Government is to be sunk. To that point we are rapidly progressing. But I would beg gentlemen to remember, that human affairs are not to be arrested in their course, at artificial points. The impulse now given may be accelerated by causes at present out of view. And when those who now design well, wish to stop, they may find their powers unable to resist the torrent. It is not true that we ever wished to give a dangerous strength to Executive power. While the Government was in our hands, it was our duty to maintain its Constitutional balance, by preserving the energies of each branch. There never was an attempt to vary the relation of its powers. The struggle was to maintain the Constitutional powers of the Executive. The wild principles of French liberty were scattered through the country. We had our Jacobins and disorganizers. They saw no difference between a King and a President, and as the people of France had put down their King, they thought the people of America ought to put down their President. They who considered the Constitution as securing all the principles of rational and practicable liberty, who were unwilling to embark upon the tempestuous sea of revolution, in pursuit of visionary schemes, were denounced as monarchists. A line was drawn between the Government and the people, and the friends of the Government were marked as the enemies of the people. I hope, however, that the Government and the people are now the same; and I pray to God that what has been frequently remarked may not in this case be discovered to be true, that they who have the name of people the most often in their mouths, have their true interests the most seldom at their hearts.

The honorable gentleman from Virginia wandered to the very confines of the Federal Administration, in search of materials the most inflammable and most capable of kindling the passions of his party.

He represents the Government as seizing the first moment which presented itself to create a dependent moneyed interest, ever devoted to its views. What are we to understand by this remark of the gentleman? Does he mean to say that Congress did wrong in funding the public debt? Does he mean to say that the price of our liberty and independence ought not to have been paid? Is he bold enough to denounce this measure as one of the Federal victims marked for destruction? Is it the design to tell us that its day has not yet come, but is approaching; and that the funding system is to add to the pile of Federal ruins? Do I hear the gentleman say we will reduce the Army to a shadow; we will give the Navy to the worms; the Mint, which presented the people with the emblems of their liberty, and of their sovereignty, we will abolish; the revenue shall depend upon the winds and waves; the judges shall be made our creatures, and the great work shall be crowned and consecrated by relieving the country from an odious and oppressive public debt? These steps, I presume, are to be taken in progression. The gentleman will pause at each, and feel the public pulse. As the fever increases he will proceed, and the moment of delirium will be seized to finish the great work of destruction.

The assumption of the State debts has been made an article of distinct crimination. It has been ascribed to the worst motives—to a design of increasing a dependent moneyed interest. Is it not well known that those debts were part of the price of our Revolution? That they rose in the exigency of our affairs, from the efforts of the particular States, at times when the Federal arm could not be extended to their relief? Each State was entitled to the protection of the Union, the defence was a common burden, and every State had a right to expect that the expenses attending its individual exertions in the general cause, would be reimbursed from the public purse. I shall be permitted further to add, that the United States, having absorbed the sources of State revenue, except direct taxation, which was required for the support of the State governments, the assumption of these debts was necessary to save some of the States from bankruptcy.

The internal taxes are made one of the crimes of the Federal Administration. They were imposed, says the gentleman, to create a host of dependents on Executive favor. This supposes the past Administrations to have been not only very wicked, but very weak. They laid taxes in order to strengthen their influence. Who is so ignorant as not to know, that the imposition of a tax would create an hundred enemies for one friend? The name of excise was odious; the details of collection were unavoidably expensive, and it was to operate upon a part of the community least disposed to support public burdens, and most ready to complain of their weight. A little experience will give the gentleman a new idea of the patronage of this Government. He will find it not that dangerous weapon in the hands of the Administration which he has heretofore supposed it; he will probably discover that the poison is accom-

panied by its antidote, and that an appointment of the Government, while it gives to the Administration one lazy friend, will raise up against it ten active enemies. No! The motive ascribed for the imposition of the internal taxes is as unfounded as it is uncharitable. The Federal Administration, in creating burdens to support the credit of the nation, and to supply the means of its protection, knew that they risked the favor of those upon whom their power depended. They were willing to be the victims when the public good required.

The duties on imports and tonnage furnished a precarious revenue—a revenue at all times exposed to deficiency, from causes beyond our reach. The internal taxes offered a fund less liable to be impaired by accident—a fund which did not rob the mouth of labor, but was derived from the gratification of luxury. These taxes are an equitable distribution of the public burdens. Through this medium the Western country is enabled to contribute something to the expenses of a Government which has expended and daily expends such large sums for its defence. When these taxes were laid they were indispensable. With the aid of them it has been difficult to prevent an increase of the public debt. And notwithstanding the fair prospects which now dazzle our eyes, I undertake to say, if you abolish them this session, you will be obliged to restore them or supply their place by a direct tax before the end of two years. Will the gentleman say, that the direct tax was laid in order to enlarge the bounds of patronage? Will he deny that this was a measure to which we had been urged for years by our adversaries, because they foresaw in it the ruin of Federal power? My word for it, no Administration will ever be strengthened by a patronage united with taxes which the people are sensible of paying.

We were next told, that to get an army an Indian war was necessary. The remark was extremely bald, as the honorable gentleman did not allege a single reason for the position. He did not undertake to state that it was a wanton war, or provoked by the Government. He did not even venture to deny, that it was a war of defence, and entered into in order to protect our brethren on the frontiers from the bloody scalping-knife and murderous tomahawk of the savage. What ought the Government to have done? Ought they to have estimated the value of the blood which probably would be shed, and the amount of the devastation likely to be committed before they determined on resistance? They raised an army, and after great expense and various fortune, they have secured the peace and safety of the frontiers. But why was the Army mentioned on this occasion, unless to forewarn us of the fate which awaits them, and to tell us that their days are numbered? I cannot suppose that the gentleman mentioned this little army, distributed on a line of three thousand miles, for the purpose of giving alarm to three hundred thousand free and brave yeomanry, ever ready to defend the liberties of the country.

The honorable gentleman proceeded to inform the Committee, that the Government, availing itself of the depredations of the Algerines, created a navy. Did the gentleman mean to insinuate, that this war was invited by the United States? Has he any documents or proof to render the suspicion colorable? No, sir, he has none. He well knows that the Algerine aggressions were extremely embarrassing to the Government. When they commenced, we had no marine force to oppose to them. We had no harbors or places of shelter in the Mediterranean. A war with these pirates could be attended with neither honor nor profit. It might cost a great deal of blood, and in the end it might be feared that a contest so far from home, subject to numberless hazards and difficulties, could not be maintained. What would gentlemen have had the Government to do? I know there are those who are ready to answer: abandon the Mediterranean trade. But would this have done? The corsairs threatened to pass the Straits, and were expected in the Atlantic. Nay, sir, it was thought that our very coasts would not have been secure.

Will gentlemen go further, and say that the United States ought to relinquish their commerce. It has been said that we ought to be cultivators of the earth, and make the nations of Europe our carriers. This is not an occasion to examine the solidity of this opinion; but I will only ask, admitting the Administration were disposed to turn the pursuits of the people of this country from the ocean to the land, whether there is a power in the Government, or whether there would be if we were as strong as the Government of Turkey, or even of France, to accomplish the object? With a seacoast of seventeen hundred miles, with innumerable harbors and inlets, with a people enterprising beyond example, is it possible to say, you will have no ships or sailors, nor merchants? The people of this country will never consent to give up their navigation, and every Administration will find themselves constrained to provide means to protect their commerce.

In respect to the Algerines, the late Administration were singularly unfortunate. They were obliged to fight or pay them. The true policy was to hold a purse in one hand and a sword in the other. This was the policy of the Government. Every commercial nation in Europe was tributary to these petty barbarians. It was not esteemed disgraceful. It was an affair of calculation, and the Administration made the best bargain in their power. They have heretofore been scandalized for paying tribute to a pirate, and now they are criminated for preparing a few frigates to protect our citizens from slavery and chains! Sir, I believe on this and many other occasions, if the finger of Heaven had pointed out a course, and the Government had pursued it, yet that they would not have escaped the censure and reproaches of their enemies.

We were told that the disturbances in Europe were made a pretext for augmenting the Army and Navy. I will not, Mr. Chairman, at present go into a detailed view of the events which com-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

pelled the Government to put on the armor of defence, and to resist by force the French aggressions. All the world know the efforts which were made to accomplish an amicable adjustment of differences with that Power. It is enough to state, that Ambassadors of peace were twice repelled from the shores of France with ignominy and contempt. It is enough to say, that it was not till after we had drunk the cup of humiliation to the dregs, that the national spirit was roused to a manly resolution, to depend only on their God and their own courage for protection. What, sir, did it grieve the gentleman that we did not crouch under the rod of the Mighty Nation, and, like the petty Powers of Europe, tamely surrender our independence? Would he have had the people of the United States relinquish without a struggle those liberties which had cost so much blood and treasure? We had not, sir, recourse to arms, till the mouths of our rivers were choked with French corsairs; till our shores, and every harbor, were insulted and violated; till half our commercial capital had been seized, and no safety existed for the remainder but the protection of force. At this moment a noble enthusiasm electrized the country; the national pulse beat high, and we were prepared to submit to every sacrifice, determined only that our independence should be the last. At that time an American was a proud name in Europe; but I fear, much I fear, that in the course we are now likely to pursue, the time will soon arrive when our citizens abroad will be ashamed to acknowledge their country.

The measures of 1798 grew out of the public feelings; they were loudly demanded by the public voice. It was the people who drove the Government to arms, and not (as the gentleman expressed it) the Government which pushed the people to the X, Y, Z, of the political designs before they understood the A, B, C, of their political principles.

But what, sir, did the gentleman mean by his X, Y, Z? I must look for something very significant—something more than a quaintness of expression, or a play upon words—in what falls from a gentleman of his learning and ability. Did he mean that the despatches which contained those letters were impostures, designed to deceive and mislead the people of America—intended to rouse a false spirit not justified by events? Though the gentleman had no respect for some of the characters of that embassy; though he felt no respect for the Chief Justice, or the gentleman appointed from South Carolina—two characters as pure, as honorable, and exalted, as any the country can boast of—yet I should have expected that he would have felt some tenderness for Mr. Gerry, in whom his party had since given proofs of undiminished confidence. Does the gentleman believe that Mr. Gerry would have joined in the deception, and assisted in fabricating a tale, which was to blind his countrymen, and to enable the Government to destroy their liberties? Sir, I will not avail myself of the equivocations or confessions of Talleyrand himself: I say these gentlemen will not

dare publicly to deny what is attested by the hand and seal of Mr. Gerry.

The truth of these despatches admitted, what was your Government to do? Give us, say the Directory, 1,200,000 livres for our own purse, and purchase \$15,000,000 of Dutch debt, (which was worth nothing,) and we will receive your Ministers, and negotiate for peace.

It was only left to the Government to choose between an unconditional surrender of the honor and independence of the country, or a manly resistance. Can you blame, sir, the Administration for a line of conduct which has reflected on the nation so much honor, and to which, under God, it owes its present prosperity?

These are the events of the General Government which the gentleman has reviewed, in succession, and endeavored to render odious or suspicious. For all this I could have forgiven him, but there is one thing for which I will not, I cannot, forgive him—I mean his attempt to disturb the ashes of the dead; to disturb the ashes of the great and good WASHINGTON! Sir, I might degrade by attempting to eulogize this illustrious character. The work is infinitely beyond my powers. I will only say that, as long as exalted talents and virtues confer honor among men, the name of WASHINGTON will be held in veneration.

After, Mr. Chairman, the honorable member had exhausted one quiver of arrows against the late Executive, he opened another, equally poisoned, against the Judiciary. He has told us, sir, that when the power of the Government was rapidly passing from Federal hands—after we had heard the thundering voice of the people which dismissed us from their service—we erected a Judiciary, which we expected would afford us the shelter of an inviolable sanctuary. The gentleman is deceived. We knew better, sir, the characters who were to succeed us, and we knew that nothing was sacred in the eyes of infidels. No, sir, I never had a thought that anything belonging to the Federal Government was holy in the eyes of those gentlemen. I could never, therefore, imagine that a sanctuary could be built up which would not be violated. I believe these gentlemen regard public opinion, because their power depends upon it; but I believe they respect no existing establishment of the Government; and if public opinion could be brought to support them, I have no doubt they would annihilate the whole. I shall at present only say further, on this head, that we thought the reorganization of the Judicial system a useful measure, and we considered it as a duty to employ the remnant of our power to the best advantage of our country.

The honorable gentleman expressed his joy that the Constitution had at last become sacred in our eyes: that we formerly held that it meant everything or nothing. I believe, sir, that the Constitution formerly appeared different in our eyes from what it appears in the eyes of the dominant party. We formerly saw in it the principles of a fair and goodly creation. We looked upon it as a source of peace, of safety, of honor, and of prosperity, to the country. But now the view is changed; it is

the instrument of wild and dark destruction; it is a weapon which is to prostrate every establishment to which the nation owes the unexampled blessings which it enjoys.

The present state of the country is an unanswerable commentary upon our construction of the Constitution. It is true that we made it mean much; and hope, sir, we shall not be taught by the present Administration that it can mean even worse than nothing.

The gentleman has not confined his animadversions to the individual establishment, but has gone so far as to make the judges the subject of personal invective. They have been charged with having transgressed the bounds of Judicial duty, and become the apostles of a political sect. We have heard of their travelling about the country for little other purpose than to preach the Federal doctrines to the people.

Sir, I think a judge should never be a partisan. No man would be more ready to condemn a judge who carried his political prejudices or antipathies on the bench. But I have still to learn that such a charge can be sustained against the judges of the United States.

The Constitution is the supreme law of the land, and they have taken pains, in their charges to grand juries, to unfold and explain its principles. Upon similar occasions, they have enumerated the laws which compose our criminal code, and when some of those laws have been denounced by the enemies of the Administration as unconstitutional, the judges may have felt themselves called upon to express their judgments upon that point, and the reasons of their opinions.

So far, but no farther, I believe, the judges have gone. In going thus far, they have done nothing more than faithfully discharge their duty.

But if, sir, they have offended against the Constitution or laws of the country, why are they not impeached? The gentleman now holds the sword of justice. The judges are not a privileged order; they have no shelter but their innocence. But, in any view, are the sins of the former judges to be fastened upon the new Judicial system? Would you annihilate a system because some men under part of it had acted wrong? The Constitution has pointed out a mode of punishing and removing the men, and does not leave this miserable pretext for the wanton exercise of powers which is now contemplated.

The honorable member has thought himself justified in making a charge of a serious and frightful nature against the judges. They have been represented going about searching out victims of the Sedition law. But no fact has been stated; no proof has been adduced, and the gentleman must excuse me for refusing my belief to the charge till it is sustained by stronger and better ground than assertion.

If, however, Mr. Chairman, the eyes of the gentleman are delighted with victims, if objects of misery are grateful to his feelings, let me turn his view from the walks of the judges to the track of the present Executive. It is in this path we see the real victims of stern, uncharitable, unre-

lenting power. It is here, sir, we see the soldier who fought the battles of the Revolution; who spilt his blood and wasted his strength to establish the independence of his country, deprived of the reward of his services, and left to pine in penury and wretchedness. It is along this path that you may see helpless children crying for bread, and gray hairs sinking in sorrow to the grave! It is here that no innocence, no merit, no truth, no services, can save the unhappy secretary who does not believe in the creed of those in power. I have been forced upon this subject, and before I leave it, allow me to remark, that without inquiring into the right of the President to make vacancies in office, during the recess of the Senate, but admitting the power to exist, yet that it never was given by the Constitution to enable the Chief Magistrate to punish the insults, to revenge the wrongs, or to indulge the antipathies of the man. If the discretion exists, I have no hesitation in saying that it is abused when exercised from any other motives than the public good. And when I see the will of a President precipitating from office men of probity, knowledge, and talents, against whom the community has no complaint, I consider it as a wanton and dangerous abuse of power. And when I see men who have been the victims of this abuse of power, I view them as the proper objects of national sympathy and commiseration.

Among the causes of impeachment against the judges, is their attempt to force the sovereignties of the States to bow before them. We have heard them called an ambitious body politic; and the fact I allude to has been considered as full proof of the inordinate ambition of the body.

Allow me to say, sir, the gentleman knows too much not to know that the judges are not a body politic. He supposed, perhaps, there was an odium attached to the appellation, which it might serve his purposes to connect with the judges. But, sir, how do you derive any evidence of the ambition of the judges from their decision that the States under our Federal compact were compellable to do justice? Can it be shown, or even said, that the judgment of the court was a false construction of the Constitution? The policy of later times on this point has altered the Constitution, and, in my opinion, has obliterated its fairest features. I am taught by my principles, that no power ought to be superior to justice. It is not that I wish to see the States humbled in dust and ashes; it is not that I wish to see the pride of any man flattered by their degradation; but it is that I wish to see the great and the small, the sovereign and the subject, bow at the altar of justice, and submit to those obligations from which the Deity himself is not exempt. What was the effect of this provision in the Constitution? It prevented the States being the judges in their own cause, and deprived them of the power of denying justice. Is there a principle of ethics more clear than that a man ought not to be a judge in his own cause, and is not the principle equally strong when applied not to one man, but to a collective body? It was the happiness of our situation which ena-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

bled us to force the greatest State to submit to the yoke of justice, and it would have been the glory of the country in the remotest times, if the principle in the Constitution had been maintained. What had the States to dread? Could they fear injustice when opposed to a feeble individual? Has a great man reason to fear from a poor one? And could a potent State be alarmed by the unfounded claim of a single person? For my part I have always thought that an independent tribunal ought to be provided to judge on the claims against this Government. The power ought not to be in our own hands. We are not impartial, and are therefore liable, without our knowledge, to do wrong. I never could see why the whole community should not be bound by as strong an obligation to do justice to an individual, as one man is bound to do it to another.

In England the subject has a better chance for justice against the Sovereign than in this country a citizen has against a State. The Crown is never its own arbiter, and they who sit in judgment have no interest in the event of their decision.

The judges, sir, have been criminated for their conduct in relation to the Sedition act, and have been charged with searching for victims who were sacrificed under it. The charge is easily made, but has the gentleman the means of supporting it? It was the evident design of the gentleman to attach the odium of the Sedition law to the Judiciary; on this score the judges are surely innocent. They did not pass the act; the Legislature made the law, and they were obliged by their oaths to execute it. The judges decided the law to be Constitutional, and I am not now going to agitate the question. I did hope, when the law passed, that its effect would be useful. It did not touch the freedom of speech, and was designed only to restrain the enormous abuses of the press. It went no further than to punish malicious falsehoods, published with the wicked intention of destroying the Government. No innocent man ever did or could have suffered under the law. No punishment could be inflicted till a jury was satisfied that a publication was false, and that the party charged, knowing it to be false, had published it with an evil design.

The misconduct of the judges, however, on this subject, has been considered by the gentleman the more aggravated, by an attempt to extend the principles of the Sedition act, by an adoption of those of the common law. Connected with this subject, such an attempt was never made by the judges. They have held generally, that the Constitution of the United States was predicated upon an existing common law. Of the soundness of that opinion, I never had a doubt. I should scarcely go too far, were I to say, that, stripped of the common law, there would be neither Constitution nor Government. The Constitution is unintelligible without reference to the common law. And were we to go into our courts of justice with the mere statutes of the United States, not a step could be taken, not even a contempt could be punished. Those statutes prescribe no forms of pleadings; they contain no principles of evidence;

they furnish no rule of property. If the common law does not exist in most cases, there is no law but the will of the judge.

I have never contended that the whole of the common law attached to the Constitution, but only such parts as were consonant to the nature and spirit of our Government. We have nothing to do, with the law of the Ecclesiastical Establishment, nor with any principle of monarchical tendency. What belongs to us, and what is unsuitable, is a question for the sound discretion of the judges. The principle is analogous to one which is found in the writings of all jurists and commentators. When a Colony is planted, it is established subject to such parts of the law of the mother country as are applicable to its situation. When our forefathers colonized the wilderness of America, they brought with them the common law of England. They claimed it as their birthright, and they left it as the most valuable inheritance to their children. Let me say, that this same common law, now so much despised and villified, is the cradle of the rights and liberties which we now enjoy. It is to the common law we owe our distinction from the colonists of France, of Portugal, and of Spain. How long is it since we have discovered the malignant qualities which are now ascribed to this law? Is there a State in the Union which has not adopted it, and in which it is not in force? Why is it refused to the Federal Constitution? Upon the same principle that every power is denied which tends to invigorate the Government. Without this law the Constitution becomes, what perhaps many gentlemen wish to see it, a dead letter.

For ten years it has been the doctrine of our courts, that the common law was in force, and yet can gentlemen say, that there has been a victim who has suffered under it? Many have experienced its protection, none can complain of its oppression.

In order to demonstrate the aspiring ambition of this body politic, the Judiciary, the honorable gentleman stated with much emphasis and feeling that the judges had been hardy enough to send their mandate into the Executive cabinet. Was the gentleman, sir, acquainted with the fact when he made this statement? It differs essentially from what I know I have heard upon the subject. I shall be allowed to state the fact.

Several commissions had been made out by the late Administration for justices of the peace of this Territory. The commissions were complete; they were signed and sealed, and left with the clerks of the Office of State to be handed to the persons appointed. The new Administration found them on the Clerk's table, and thought proper to withhold them. These officers are not dependent on the will of the President. The persons named in the commissions considered that their appointments were complete, and that the detention of their commissions was a wrong, and not justified by the legitimate authority of the Executive. They applied to the Supreme Court for a rule upon the Secretary of State, to show cause why a mandamus should not issue, commanding

him to deliver up the commissions. Let me ask, sir, what could the judges do? The rule to show cause was a matter of course upon a new point, at least doubtful. To have denied it, would have been to shut the doors of justice against the parties. It concludes nothing, neither the jurisdiction nor the regularity of the act. The judges did their duty; they gave an honorable proof of their independence. They listened to the complaint of an individual against your President, and have shown themselves disposed to grant redress against the greatest man in the Government. If a wrong has been committed, and the Constitution authorizes their interference, will gentlemen say that the Secretary of State, or even the President, is not subject to law? And if they violate the law, where can we apply for redress but to our courts of justice? But, sir, it is not true that the judges issued their mandate to the Executive; they have only called upon the Secretary of State to show them that what he has done is right. It is but an incipient proceeding which decides nothing.

Mr. GILES rose to explain. He said that the gentleman from Delaware had ascribed to him many things which he did not say, and had afterwards undertaken to refute them. He had only said that mandatory process had issued; that the course pursued by the court indicated a belief by them that they had jurisdiction, and that in the event of no cause being shewn, a mandamus would issue.]

Mr. BAYARD.—I stated the gentleman's words as I took them down. It is immaterial whether the mistake was in the gentleman's expression or in my understanding. He has a right to explain, and I will take his position as he now states it. I deny, sir, that mandatory process has issued. Such process would be imperative, and suppose a jurisdiction to exist; the proceeding which has taken place, is no more than notice of the application for justice made to the court, and allows the party to show, either that no wrong has been committed, or that the court has no jurisdiction over the subject. Even, sir, if the rule were made absolute, and the mandamus issued, it would not be definitive, but it would be competent for the Secretary in a return to the writ, to justify the act which has been done, or to show that it is not a subject of judicial cognizance.

It is not till after an insufficient return that a peremptory mandamus issues. In this transaction, so far from seeing anything culpable in the conduct of your judges, I think, sir, that they have given a strong proof of the value of that Constitutional provision which makes them independent. They are not terrified by the frowns of Executive power, and dare to judge between the rights of a citizen and the pretensions of a President.

I believe, Mr. Chairman, I have gone through most of the preliminary remarks which the honorable gentleman thought proper to make before he proceeded to the consideration of those points which properly belong to the subject before the Committee. I have not supposed the topics I

have been discussing had any connexion with the bill on your table; but I felt it as a duty not to leave unanswered charges against the former Administrations and our judges, of the most insidious tendency, which I know to be unfounded, which were calculated and designed to influence the decision on the measure now proposed. Why, Mr. Chairman, has the present subject been combined with the Army, the Navy, the internal taxes and the Sedition law? Was it to involve them in one common odium, and consign them to one common fate? Do I see in the preliminary remarks of the honorable member the title-page of the volume of measures which are to be pursued? Are gentlemen sensible of the extent to which it is designed to lead them? They are now called on to reduce the Army, to diminish the Navy, to abolish the Mint, to destroy the independence of the Judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful source of moneyed interest and aristocratic influence? Be assured, sir, we see but a small part of the system which has been formed. Gentlemen know the advantage of progressive proceedings, and my life for it, if they can carry the people with them, their career will not be arrested while a trace remains of what was done by the former Administrations.

There was another remark of the honorable member which I must be allowed to notice. The pulpit, sir, has not escaped invective. The ministers of the Gospel have been represented, like the judges, forgetting the duties of their calling, and employed in disseminating the heresies of Federalism. Am I then, sir, to understand that religion is also denounced, and that your churches are to be shut up? Are we to be deprived, sir, both of law and Gospel? Where do the principles of the gentlemen end? When the system of reform is completed, what will remain? I pray God that this flourishing country, which, under his Providence, has attained such a height of prosperity, may yet escape the desolation suffered by another nation, by the practice of similar doctrines.

I beg pardon of the Committee for having consumed so much time upon points so little connected with the subject of the debate. Till I heard the honorable member from Virginia yesterday, I was prepared only to discuss the merits of the bill upon which you are called to vote. His preliminary remarks were designed to have an effect which I deemed it material to endeavor to counteract, and I therefore yielded to the necessity of pursuing the course he had taken, though I was conscious of departing very far from the subject before the Committee. To the discussion of that subject I now return with great satisfaction, and shall consider it under the two views it naturally presents; the constitutionality and the expediency of the measure. I find it most convenient to consider first the question of expediency, and shall therefore beg leave to invert the natural order of the inquiry.

To show the inexpediency of the present bill, I shall endeavor to prove the expediency of the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

judicial law of the last session. In doing this it will be necessary to take a view of the leading features of the pre-existing system, to inquire into its defects, and to examine how far the evils complained of were remedied by the provisions of the late act. It is not my intention to enter into the details of the former system; it can be necessary only to state so much as will distinctly shew its defects.

There existed, sir, a Supreme Court, having original cognizance in a few cases, but principally a court of appellate jurisdiction. This was the great national court of dernier resort. Before this tribunal, questions of unlimited magnitude and consequence, both of a civil and political nature, received their final decision; and I may be allowed to call it the national crucible of justice, in which the judgments of inferior courts were to be reduced to their elements and cleansed from every impurity. There was a Circuit Court, composed in each district of a judge of the Supreme Court and the district judge. This was the chief court of business both of a civil and criminal nature.

In each district a court was established for affairs of revenue, and of admiralty and maritime jurisdiction. It is not necessary for the purposes of the present argument to give a more extensive outline of the former plan of our Judiciary. We discover that the judges of the Supreme Court, in consequence of their composing a part of the circuit courts, were obliged to travel from one extremity to the other of this extensive country. In order to be in the court-house two months in the year they were forced to be upon the road six. The Supreme Court being the court of last resort, having final jurisdiction over questions of incalculable importance, ought certainly to be filled with men not only of probity, but of great talents, learning, patience, and experience. The union of these qualities, is rarely, very rarely found in men who have not passed the meridian of life. My Lord Coke tells us no man is fit to be a judge until he has numbered the lucubrations of twenty years. Men of studious habits are seldom men of strong bodies. In the course of things it could not be expected that men fit to be judges of your Supreme Courts would be men capable of traversing the mountains and wildernesses of this extensive country? It was an essential and great defect in this court, that it required in men the combination of qualities, which it is a phenomenon to find united. It required that they should possess the learning and experience of years and the strength and activity of youth. I may say further, Mr. Chairman, that this court, from its constitution, tended to deterioration and not to improvement. Your judges, instead of being in their closets and increasing by reflection and study their stock of wisdom and knowledge, had not even the means of repairing the ordinary waste of time. Instead of becoming more learned and more capable, they would gradually lose the fruits of their former industry. Let me ask if this was not a vicious construction of a court of the highest authority and greatest importance in the nation? In a court from which no one had an

appeal and to whom it belonged to establish the leading principles of national jurisprudence?

In the constitution of this court, as a court of last resort, there was another essential defect. The appeals to this court are from the circuit courts. The circuit court consists of the district judge, and a judge of the Supreme Court. In cases where the district judge is interested, where he has been counsel, and where he has decided in the court below, the judge of the Supreme Court alone composes the circuit court. What, then, is substantially the nature of this appellate jurisdiction? In truth and practice, the appeal is from a member of a court to the body of the same court. The circuit courts are but emanations of the Supreme Court. Cast your eyes upon the Supreme Court; you see it disappear, and its members afterwards arising in the shape of circuit judges. Behold the circuit judges; they vanish, and immediately you perceive the form of the Supreme Court appearing. There is, sir, a magic in this arrangement which is not friendly to justice. When the Supreme Court assembles, appeals come from the various circuits of the United States. There are appeals from the decisions of each judge. The judgments of each member pass in succession under the revision of the whole body. Will not a judge, while he is examining the sentence of a brother to-day, remember that that brother will sit in judgment upon his proceedings to-morrow? Are the members of a court thus constituted, free from all motive, exempt from all bias, which could even remotely influence opinion on the point of strict right? and yet let me ask emphatically, whether this court, being the court of final resort, should not be so constituted that the world should believe and every suitor be satisfied, that in weighing the justice of a cause, nothing entered the scales but its true merits?

Your Supreme Court, sir, I have never considered as anything more than the judges of assize sitting in bank. It is a system with which perhaps I should find no fault, if the judges sitting in bank did not exercise a final jurisdiction. Political institutions should be so calculated as not to depend upon the virtues, but to guard against the vices and weaknesses of men. It is possible that a judge of the Supreme Court would not be influenced by the *esprit du corps*, that he would neither be gratified by the affirmation, nor mortified by the reversal of his opinions; but this, sir, is estimating the strength and purity of human nature upon a possible, but not on its ordinary scale.

I believe, said Mr. B., that in practice the formation of the Supreme Court frustrated, in a great degree, the design of its institution. I believe that many suitors were discouraged from seeking a revision of the opinions of the circuit court, by a deep impression of the difficulties to be surmounted in obtaining the reversal of the judgment of a court from the brethren of the judge who pronounced the judgment. The benefit of a court of appeals, well constituted, is not confined to the mere act of reviewing the sentence of an inferior court; but is more extensively use-

H. OF R.

Judiciary System.

FEBRUARY, 1802.

ful by the general operation of the knowledge of its existence upon inferior courts. The power of uncontrollable decision is of the most delicate and dangerous nature. When exercised in the courts, it is more formidable than by any other branch of our Government. It is the Judiciary only which can reach the person, the property, or life of an individual. The exercise of their power is scattered over separate cases, and creates no common cause. The great safety under this power arises from the right of appeal. A sense of this right combines the reputation of the judge with the justice of the cause. In my opinion, it is a strong proof of the wisdom of a Judicial system when few causes are carried into the court of the last resort. I would say, if it were not paradoxical, that the very existence of a court of appeals ought to destroy the occasion for it. The conscience of the judge, sir, will no doubt be a great check upon him in the unbounded field of discretion created by the uncertainty of law; but I should, in general cases, more rely upon the effect produced by his knowledge, than an inadvertent or designed abuse of power was liable to be corrected by a superior tribunal. A court of appellate jurisdiction, organized upon sound principles, should exist, though few causes arose for their decision; for it is surely better to have a court and no causes, than to have causes and no court. I now proceed, sir, to consider the defects which are plainly discernable, or which have been discovered by practice in the constitution of the circuit courts. These courts, from information which I have received, I apprehend were originally constructed upon a fallacious principle. I have heard it stated that the design of placing the judges of the Supreme Court in the circuit courts, was to establish uniform rules of decision throughout the United States. It was supposed that the presiding judges of the circuit courts, proceeding from the same body, would tend to identify the principles and rules of decision in the several districts. In practice, a contrary effect has been discovered to be produced by the peculiar organization of these courts. In practice we have found not only a want of uniformity of rule between the different districts, but no uniformity of rule in the same district. No doubt there was an uniformity in the decisions of the same judge; but as the same judges seldom sat twice successively in the same district, and sometimes not till after an interval of two or three years, his opinions were forgotten or reversed before he returned. The judges were not educated in the same school. The practice of the courts, the forms of proceeding, as well as the rules of property, are extremely various in the different quarters of the United States. The lawyers of the Eastern, the Middle, and Southern States, are scarcely professors of the same science. These courts were in a state of perpetual fluctuation. The successive terms gave you courts in the same district, as different from each other as those of Connecticut and Virginia. No system of practice could grow up, no certainty of rule could be established. The seeds sown in one term scarcely vegetated before they were trodden under foot.

The condition of a suitor was terrible; the ground was always trembling under his feet. The opinion of a former judge was no precedent to his successor. Each considered himself bound to follow the light of his own understanding. To exemplify these remarks, I will take the liberty of stating a case which came under my own observation. An application before one judge was made to quash an attachment in favor of a subsequent execution creditor; the application was resisted upon two grounds, and the learned judge, to whom the application was first made, expressing his opinion in support of both grounds, dismissed the motion. At the succeeding court, a different judge presided, and the application was renewed and answered upon the same grounds. The second learned judge was of opinion, that one point has no validity, but he considered the other sustainable, and was about also to dismiss the motion, but upon being pressed, at last consented to grant a rule to show cause. At the third term, a third learned judge was on the bench, and though the case was urged upon its former principles, he was of opinion, that both answers to the application were clearly insufficient, and accordingly quashed the attachment. When the opinions of his predecessors were cited, he replied, that every man was to be saved by his own faith.

Upon the opinion of one judge, a suitor would set out in a long course of proceedings, and after losing much time and wasting much money, he would be met by another judge, who would tell him he had mistaken his road, that he must return to the place from which he started, and pursue a different track. Thus it happened as to the chancery process to compel the appearance of a defendant. Some of the judges considered themselves bound by the rules in the English books, while others conceived that a power belonged to the court, upon the service of a subpoena, to make a short rule for the defendant to appear and answer, or that the bill should be taken *pro confesso*. A case of this kind occurred where much embarrassment was experienced. In the circuit court for the district of Pennsylvania, a bill in chancery was filed against a person, who then happened to be in that district, but whose place of residence was in the Northwestern Territory. The subpoena was served, but there was no answer nor appearance. The court to which the writ was returned, without difficulty, upon an application, granted a rule for the party to appear and answer at the expiration of a limited time, or that the bill be taken *pro confesso*. A personal service of this rule being necessary, the complainant was obliged to hire a messenger to travel more than a thousand miles to serve a copy of the rule. At the ensuing court, affidavit was made of the service, and a motion to make the rule absolute. The scene immediately changed, a new judge presided, and it was no longer the same court.

The authority was called for to grant such a rule. Was it warranted by any act of Congress, or by the practice of the State? It was answered there is no act of Congress—the State has no court of chancery. But this proceeding was in-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

stituted, and has been brought to its present stage at considerable expense, under the direction of this court. The judge knew of no power the court had to direct the proceeding, and he did not consider that the complainant could have a decree upon his bill without going through the long train of process found in the books of chancery practice. The complainant took this course, and at a future time was told by another judge, that he was incurring an unnecessary loss of time and money, and that a common rule would answer his purpose. I ask you, Mr. Chairman, if any system could be devised more likely to produce vexation and delay? Surely, sir, the law is uncertain enough in itself, and its paths sufficiently intricate and tedious not to require that your suitors should be burdened with additional embarrassments by the organization of your courts.

The circuit is the principal court of civil and criminal business; the defects of this court were, therefore, most generally and sensibly felt. The high characters of the judges at first brought suitors into the courts; but the business was gradually declining, though causes belonging to the jurisdiction of the courts were multiplying, the continual oscillation of the court baffled all conjecture as to the correct course of the proceeding or the event of a cause. The law ceased to be a science. To advise your client it was less important to be skilled in the books than to be acquainted with the character of the judge who was to preside. When the term approached, the inquiry was, what judge are we to have? What is his character as a lawyer? Is he acquainted with chancery law? Is he a strict common lawyer, or a special pleader?

When the character of the judge was ascertained, gentlemen would then consider the nature of their causes, determine whether it was more advisable to use means to postpone or to bring them to a hearing.

The talents of the judges rather increased the evil, than afforded a corrective for the vicious constitution of these courts. They had not drawn their knowledge from the same sources. Their systems were different, and hence the character of the court more essentially changed at each successive term. These difficulties and embarrassments banished suitors from the court, and without more than a common motive, recourse was seldom had to the Federal tribunals.

I have ever considered it, also, as a defect in this court, that it was composed of judges of the highest and lowest grades. This, sir, was an unnatural association; the members of the court stood on ground too unequal to allow the firm assertion of his opinion to the district judge. Instead of being elevated, he felt himself degraded by a seat upon the bench of this court. In the district court he was everything, in the circuit court he was nothing. Sometimes he was obliged to leave his seat, while his associate reviewed the judgment which he had given in the court below. In all cases he was sensible that the sentences in the court in which he was, were subject to the revision and control of a superior jurisdiction where

he had no influence, but the authority of which was shared by the judge with whom he was acting. No doubt in some instances the district judge was an efficient member of this court, but this never arose from the nature of the system, but from the personal character of the man. I have yet, Mr. Chairman, another fault to find with the ancient establishment of the circuit courts. They consisted only of two judges, and sometimes of one. The number was too small, considering the extent and importance of the jurisdiction of the court. Will you remember, sir, that they held the power of life and death, without appeal? That their judgments were final over sums of two thousand dollars, and their original jurisdiction restrained by no limits of value, and that this was the court to which appeals were carried from the district court.

I have often heard, sir, that in a multitude of counsel there was wisdom, and if the converse of the maxim be equally true, this court must have been very deficient. When we saw a single judge reversing the judgment of the district court, the objection was most striking, but the court never had the weight which it ought to have possessed, and would have enjoyed had it been composed of more members. But two judges belonged to the court, and inconvenience was sometimes felt from a division of their opinions. And this inconvenience was but poorly obviated by the provision of the law that in such cases the cause should be continued to the succeeding term, and receive its decision from the opinion of the judge who should then preside.

I do not pretend, Mr. Chairman, to have enumerated all the defects which belonged to the former judicial system. But I trust those which I have pointed out, in the minds of candid men, will justify the attempt of the Legislature to revise that system, and to make a fairer experiment of that part of the plan of our Constitution which regards the judicial power. The defects, sir, to which I have alluded, had been a long time felt and often spoken of. Remedies had frequently been proposed. I have known the subject brought forward in Congress or agitated in private, ever since I have had the honor of a seat upon this floor. I believe, sir, a great and just deference for the author of the ancient scheme prevented any innovation upon its material principles; there was no gentleman who felt that deference more than myself, nor should I have ever hazarded a change upon speculative opinion. But practice had discovered defects which might well escape the most discerning mind in planning the theory. The original system could not be more than experiment; it was built upon no experience. It was the first application of principles to a new state of things. The first judicial law displays great ability, and it is no disparagement of the author to say its plan is not perfect.

I know, sir, that some have said, and perhaps not a few have believed, that the new system was introduced not so much with a view to its improvement of the old, as to the places which it provided for the friends of the Administration.

H. OF R.

Judiciary System.

FEBRUARY, 1802.

This is a calumny so notoriously false, and so humble, as not to require nor to deserve an answer upon this floor. It cannot be supposed that the paltry object of providing for sixteen unknown men could have ever offered an inducement to a great party basely to violate their duty, meanly to sacrifice their character, and foolishly to forego all future hopes.

I now come, Mr. Chairman, to examine the changes which were made by the late law. This subject has not been correctly understood. It has everywhere been erroneously represented. I have heard much said about the additional courts created by the act of last session. I perceive them spoken of in the President's Message. In the face of this high authority, I undertake to state, that no additional court was established by that law. Under the former system there was one Supreme Court, and there is but one now. There were seventeen district courts, and there are no more now. There was a circuit court held in each district, and such is the case at present. Some of the district judges are directed to hold their courts at new places, but there is still in each district but one district court. What, sir, has been done? The unnatural alliance between the supreme and district courts has been severed, but the jurisdiction of both these courts remains untouched. The power or authority of neither of them has been augmented or diminished. The jurisdiction of the circuit court has been extended to the cognizance of debts of four hundred dollars, and this is the only material change in the power of that court. The chief operation of the late law is a new organization of the circuit courts. To avoid the evils of the former plan, it became necessary to create a new corps of judges. It was considered that the Supreme Court ought to be stationary, and to have no connexion with the judges over whose sentences they had an appellate jurisdiction.

To have formed a circuit court out of the district judges, would have allowed no court of appeal from the district court, except the Supreme Court, which would have been attended with great inconvenience. But this scheme was opposed by a still greater difficulty. In many districts the duties of the judge require a daily attention. In all of them business of great importance may on unexpected occurrences require his presence.

This plan was thought of; it was well-examined and finally rejected, in consequence of strong objections to which it was liable. Nothing therefore remained but to compose the circuit court of judges distinct from those of the other courts. Admitting the propriety of excluding from this court the judges of the supreme and district courts, I think the late Congress cannot be accused of any wanton expense, nor even of a neglect of economy in the new establishment. This extensive country has been divided into six circuits, and three judges appointed for each circuit. Most of the judges have twice a year to attend a court in three States, and there is not one of them who has not to travel further, and who in time will not

have more labor to perform than any judge of the State courts. When we call to mind that the jurisdiction of this court reaches the life of the citizen, and that in civil cases its judgments are final to a large amount, certainly it will not be said that it ought to have been composed of less than three judges. One was surely not enough, and if it had been doubtful whether two were not sufficient, the inconvenience which would have frequently arisen from an equal division of opinion, justifies the provision which secures a determination in all cases.

It was, additionally, very material to place on the bench of this court a judge from each State, as the court was in general bound to conform to the law and the practice of the several States.

I trust, sir, the Committee are satisfied that the number of judges which compose the circuit court is not too great, and that the Legislature would have been extremely culpable to have committed the high powers of this court to fewer hands. Let me now ask, if the compensation allowed to these judges is extravagant? It is little more than half the allowance made to the judges of the Supreme Court. It is but a small proportion of the ordinary practice of those gentlemen of the bar, who are fit, and to whom we ought to look to fill the places. You have given a salary of two thousand dollars. The puisne judges of Pennsylvania, I believe, have more. When you deduct the expenses of the office, you will leave but a moderate compensation for service, but a scanty provision for a family. When, Mr. Chairman, gentlemen coolly consider the amendments of the late law, I flatter myself their candor will at least admit that the present modification was fairly designed to meet and remedy the evils of the old system.

The Supreme Court has been rendered stationary. Men of age, of learning, and of experience, are now capable of holding a seat on the bench; they have time to mature their opinions in causes on which they are called to decide, and they have leisure to devote to their books, and to augment their store of knowledge. It was our hope, by the present establishment of the court, to render it the future pride, and honor, and safety of the nation. It is this tribunal which must stamp abroad the judicial character of our country. It is here that ambassadors and foreign agents resort for justice; and it belongs to this high court to decide finally, not only on controversies of unlimited value between individuals, and on the more important collision of State pretensions, but also upon the validity of the laws of the States, and of this Government. Will it be contended that such great trusts ought to be reposed in feeble or incapable hands? It has been asserted that this court will not have business to employ it. The assertion is supported neither by what is past, nor by what is likely to happen. During the present session of Congress, at their last term, the court was fully employed for two weeks in the daily hearing of causes. But its business must increase. There is no longer that restraint upon appeals from the circuit court, which was imposed by the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

authority of the judge of the court to which the appeal was to be carried; no longer will the apprehension of a secret unavoidable bias in favor of the decision of a member of their own body, shake the confidence of a suitor, in resorting to this court, who thinks that justice has not been done to him in the court below. The progressive increase of the wealth and population of the country, will unavoidably swell the business of the court. But there is a more certain and unfailing source of employment, which will arise in the appeals from the courts of the National Territory. From the courts of original cognizance in this Territory, it affords the only appellate jurisdiction. If gentlemen will look to the state of property of a vast amount in this city, they must be satisfied that the Supreme Court will have enough to do for the money which is paid them.

Let us next consider, sir, the present state of the circuit courts.

There are six courts, which sit in twenty-two districts, each court visits at least three districts, some four. The courts are now composed of three judges of equal power and dignity. Standing on equal ground, their opinions will be independent and firm. Their number is the best for consultation, and they are exempt from the inconvenience of an equal division of opinion. But what I value most, and what was designed to remedy the great defect of the former system, is the identity which the court maintains. Each district has now always the same court. Each district will hereafter have a system of practice and uniformity of decision. The judges of each circuit will now study, and learn, and retain the laws and practice of their respective districts. It never was intended, nor is it practicable, that the same rule of property or of proceeding should prevail from New Hampshire to Georgia. The old courts were enjoined to obey the laws of the respective States. Those laws fluctuate with the will of the State Legislatures, and no other uniformity could ever be expected, but in the construction of the Constitution and statutes of the United States. This uniformity is still preserved by the control of the Supreme court over the courts of the circuits. Under the present establishment, a rational system of jurisprudence will arise. The practice and local laws of the different districts may vary, but in the same district they will be uniform. The practice of each district will suggest improvements to the others, the progressive adoption of which will in time assimilate the systems of the several districts.

It is unnecessary, Mr. Chairman, for me to say anything in relation to the district courts. Their former jurisdiction was not varied by the law of the last session.

It has been my endeavor, sir, to give a correct idea of the defects of the former judicial plan, and of the remedies for those defects introduced by the law now designed to be repealed. I do not pretend to say that the present system is perfect; I contend only that it is better than the old. If, sir, instead of destroying, gentlemen will undertake to improve the present plan, I will not only

applaud their motives, but will assist in their labor. We ask only that our system may be tried. Let the sentence of experience be pronounced upon it. Let us hear the national voice after it has been felt. They will then be better able to judge its merits. In practice it has not yet been complained of; and as it is designed for the benefit of the people, how can their friends justify the act of taking it from them before they have manifested their disposition to part with it?

How, sir, am I to account for the extreme anxiety to get rid of this establishment? Does it proceed from that spirit which, since power has been given to it, has so unrelentingly persecuted men in office who belonged to a certain sect? I hope there will be a little patience; these judges are old and infirm men; they will die; they must die: wait but a short time, their places will be vacant; they will be filled with the disciples of the new school, and gentlemen will not have to answer for the political murder which is now meditated.

I shall take the liberty now, sir, of paying some attention to the objections which have been expressed against the late establishment. An early exception, which, in the course of the debate, has been abandoned by most gentlemen, and little relied on by any one, is the additional expense. The gentleman from Virginia stated the expense of the present establishment at one hundred and thirty-seven thousand dollars. On this head the material question is, not what is the expense of the whole establishment, but what will be saved by the repealing law on the table. I do not estimate the saving at more than twenty-eight thousand five hundred dollars. You save nothing but the salaries of sixteen judges, of two thousand dollars each. From this amount is to be deducted the salary of a Judge of the Supreme Court which is three thousand five hundred dollars. Abolishing the present system will not vary the incidental expenses of the circuit court. You receive a circuit court whose incidental expenses will be equal to those of the court you destroy. The increased salaries of the district judges of Kentucky and Tennessee must remain. It is not proposed to abolish their offices, and the admissions upon the other side allow that the salaries cannot be reduced.

If there were no other objection, the present bill could not pass without amendment, because it reduces the salaries of those judges, which is a plain, undeniable infraction of the Constitution. But, sir, it is not a fair way of treating the subject to speak of the aggregate expense. The great inquiry is, whether the judges are necessary, and whether the salaries allowed to them are reasonable? Admitting the utility of the judges, I think no gentlemen will contend that the compensation is extravagant.

We are told of the expense attending the Federal Judiciary. Can gentlemen tell me of a Government under which justice is more cheaply administered? Add together the salaries of all your judges, and the amount but little exceeds the emoluments of the Chancellor of England. Ascertain the expenses of State justice, and the

proportion of each State of the expense of federal justice, and you will find that the former is five times greater than the latter. Do gentlemen expect that a system expanded over the whole Union is to cost no more than the establishment of a single State? Let it be remembered, sir, that the Judiciary is an integral and co-ordinate part with the highest branches of the Government. No Government can long exist without an efficient Judiciary. It is the Judiciary which applies the law and enables the Executive to carry it into effect. Leave your laws to the judiciaries of the States to execute, and my word for it in ten years you have neither law nor Constitution. Is your Judiciary so costly that you will not support it? Why then lay out so much money upon the other branches of your Government? I beg that it will be recollected that if your Judiciary costs you thousands of dollars, your Legislature costs you hundreds of thousands, and your Executive millions.

An objection has been derived from the paucity of causes in the federal courts, and the objection has been magnified by the allegation, that the number had been annually decreasing. The facts admitted, I draw a very different inference from my opponents. In my opinion they furnish the strongest proof of the defects of the former establishment, and of the necessity of a reform. I have no doubt, nay, I know it to be the fact, that many suitors were diverted from those tribunals by the fluctuations to which they were subject. Allow me, however, to take some notice of the facts. They are founded upon the Presidential document No. 8. Taking the facts as there stated, they allow upwards of fifty suits annually for each court. When it is considered that those causes must each have exceeded the value of five hundred dollars, and that they were generally litigated cases, I do not conceive that there is much ground to affirm that the courts were without business. But, sir, I must be excused for saying, I pay little respect to this document. It has been shown by others in several points to be erroneous, and from my own knowledge, I know it to be incorrect. What right had the President to call upon the clerks to furnish him with the list of the suits which had been brought, or were depending in their respective courts? Had this been directed by Congress, or was there any money appropriated to pay the expense? Is there any law which made it the duty of the clerks to obey the order of the Executive? Are the clerks responsible for refusing the lists, or for making false or defective returns? Do we know anything about the authenticity of the certificates made by the clerks? And are we not now aiming a mortal blow at one branch of the Government, upon the credit, and at the instigation of another and a rival department? Yes, sir, I say, at the instigation of the President, for I consider this business wholly as a Presidential measure. This document and his Message, show that it originated with him; I consider it as now prosecuted by him, and I believe that he has the power to arrest its progress, or to accomplish its completion. I repeat that it is his measure. I hold him responsible for it; and I trust in God that the

time may come, when he will be called upon to answer for it as his act. And I trust the time will arrive, when he will hear us speaking upon the subject more effectually.

It has been stated as the reproach, sir, of the bill of the last session, that it was made by a party at the moment when they were sensible that their power was expiring and passing into other hands. It is enough for me, that the full and legitimate power existed. The remnant was plenary and efficient. And it was our duty to employ it according to our judgment and conscience for the good of the country. We thought the bill a salutary measure, and there was no obligation upon us to leave it as a work for our successors. Nay, sir, I have no hesitation in avowing, that I had no confidence in the persons who were to follow us. And I was the more anxious while we had the means to accomplish a work which I believed they would not do, and which I sincerely thought would contribute to the safety of the nation, by giving strength and support to the Constitution through the storm to which it was likely to be exposed. The fears, which I then felt, have not been dispelled, but multiplied by what I have since seen. I know nothing which is to be allowed to stand. I observe the institutions of the Government falling around me, and where the work of destruction is to end God alone knows. We discharged our consciences in establishing a judicial system, which now exists, and it will be for those who now hold the power of the Government to answer for the abolition of it, which they at present meditate. We are told, that our law was against the sense of the nation. Let me tell those gentlemen, they are deceived, when they call themselves the nation. They are only a dominant party, and though the sun of Federalism should never rise again, they will shortly find men better or worse than themselves thrusting them out of their places. I know it is the cant of those in power, however they have acquired it, to call themselves the nation. We have recently witnessed an example of it abroad. How rapidly did the nation change in France? At one time Brissot called himself the nation; then Robespierre, afterwards Tallien and Barras, and finally Bonaparte. But their dreams were soon dissipated, and they awoke in succession upon the scaffold, or in banishment. Let not those gentlemen flatter themselves, that Heaven has reserved to them a peculiar destiny. What has happened to others in this country, they must be liable to. Let them not exult too highly in the enjoyment of a little brief and fleeting authority. It was ours yesterday, it is theirs to day, but to-morrow it may belong to others.

[Mr. BAYARD here stated, that he had gone through the remarks he had to make connected with the first point of the debate; that he observed, that the common hour of adjournment had gone by, and that he should sit down in order to allow the Committee to rise, if they thought proper; and that he should beg leave to be heard the following day upon the second point. After some conversation, the Committee rose, reported—and the House adjourned.]

FEBRUARY, 1802.

Judiciary System.

H. OF R.

SATURDAY, February 20.

A memorial of sundry inhabitants of the city and county of Philadelphia, in the State of Pennsylvania, was presented to the House and read, praying a repeal of the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States."—Referred.

Mr. STANLEY, one of the members from the State of North Carolina, presented to the House certain resolutions agreed to by the two branches of the Legislature of the said State, on the fifteenth of December last, proposing amendments to the Constitution of the United States, respecting a choice of a President and Vice President, and the election of Representatives to Congress from the several States; which were received, read, and ordered to be referred to a Committee of the whole House on the state of the Union.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. BAYARD.—I owe to the Committee the expression of my thanks for the patience with which they attended to the laborious discussion of yesterday.

It will be my endeavor, in the remarks which I have to offer upon the remaining part of the debate, to consume no time which the importance of the subject does not justify. I have never departed from the question before the Committee, but with great reluctance. Before I heard the gentleman from Virginia, I had not an observation to make unconnected with the bill on the table. It was he who forced me to wander on foreign ground; and be assured, sir, I shall be guilty of no new digressions where I am not covered by the same justification.

I did think that this was an occasion when the House ought to have been liberated from the dominion of party spirit, and allowed to decide upon the unbiassed dictates of their understanding. The vain hope which I indulged that this course would be pursued was soon dissipated by the inflammatory appeal made, by the gentleman from Virginia, to the passions of his party. This appeal (which treated with no respect the feelings of one side of the House) will excuse recriminations which have been made, or which shall be retorted. We were disposed to conciliate, but gentlemen are deceived if they think that we will submit to be trampled on.

I shall now, sir, proceed to the consideration of the second point which the subject presents. However this point may be disguised by subtleties, I conceive the true question to be, Has the Legislature a right, by a law, to remove a judge? Gentlemen may state their question to be, Has the Legislature a right by law to vacate the office of a judge? But, as in fact they remove the judges, they are bound to answer our question.

The question which I state they will not meet.

Nay, I have considered it as conceded, upon all hands, that the Legislature have not the power of removing a judge from his office; but it is contended only that the office may be taken from the judge. Sir, it is a principle in law, which ought, and I apprehend does, hold more strongly in politics, that what is prohibited from being done directly, is restrained from being done indirectly. Is there any difference, but in words, between taking the office from a judge and removing a judge from the office? Do you not indirectly accomplish the end which you admit is prohibited? I will not say that it is the sole intention of the supporters of the bill before us to remove the circuit judges from their offices, but I will say that they establish a precedent which will enable worse men than themselves to make use of the Legislative power, for that purpose, upon any occasion. If it be Constitutional to vacate the office, and in that way to dismiss the judge, can there be a question as to the power to re-create the office and fill it with another man? Repeal to-day the bill of the last session, and the circuit judges are no longer in office. To-morrow, rescind this repealing act, (and no one will doubt the right to do it,) and no effect is produced but the removal of the judges. To suppose that such a case may occur, is no vagary of imagination. The thing has been done, shamelessly done, in a neighboring State. The judges there held their offices upon the same tenure with the judges of the United States. Three of them were obnoxious to the men in power. The Judicial law of the State was repealed, and immediately re-enacted, without a veil being thrown over the transaction. The obnoxious men were removed, their places supplied with new characters, and the other judges were re-appointed. Whatever sophistry may be able to show in theory, in practice there never will be found a difference in the exercise of the powers of removing a judge and of vacating his office.

The question which we are now considering depends upon the provisions contained in the Constitution. It is an error of the Committee, upon plain subjects, to search for reasons very profound. Upon the present subject, the strong provisions of the Constitution are so obvious that no eye can overlook them. They have been repeatedly cited, and, as long as the question stated is under discussion, they must be reiterated. There are two prominent provisions to which I now particularly allude: first, the judges shall hold their offices during good behaviour; secondly, their compensation shall not be diminished during their continuance. These are provisions so clearly understood, upon the first impression, that their meaning is rather obscured than illustrated by argument. What is meant, and what has been universally understood, by the tenure of "good behaviour?" *A tenure for life*, if the judge commit no misdemeanor. It is so understood and expressed in England, and so it has always been received and admitted in this country. The *express* provision, then, of the Constitution, defines the tenure of a judge's office—a tenure during life. How is that tenure *expressly* qualified? By the good beha-

H. OF R.

Judiciary System.

FEBRUARY, 1802.

viour of the judge. Is the tenure qualified by any other *express* condition or limitation? No other. As the tenure is *express*—as but one *express* limitation is imposed upon it—can it be subject to any other limitation not derived from necessary implication? If any material provision in the Constitution can in no other manner be satisfied than by subjecting the tenure of this office to some new condition, I will then admit that the tenure is subject to the condition.

Gentlemen have ventured to point out a provision which they conceived furnished this necessary implication. They refer to the power given to Congress, from time to time, to establish courts inferior to the Supreme Court. If this power cannot be exercised without vacating the offices of existing judges, I will concede that those offices may be vacated. But, on this head, there can be no controversy. The power has been, and at all times may be, exercised, without vacating the office of any judge. It was so exercised at the last session of Congress, and I surely do not now dispute the right of gentlemen to establish as many new courts as they may deem expedient. The power to establish new courts does not, therefore, imply a power to abolish the offices of existing judges, because the existence of those offices does not prevent an execution of the power.

The clause in the Constitution to which I have just alluded has furnished to gentlemen their famous position, that, though you cannot remove a judge from his office, you may take the office from the judge. Though I should be in order, I will not call this a quibble; but I shall attempt, in the course of the argument, yet more clearly to prove that it is one. I do not contend that you cannot abolish an empty office; but the point on which I rely, is, that you can do no act which impairs the independence of a judge. When gentlemen assert that the office may be vacated, notwithstanding the incumbency of the judge, do they consider that they beg the very point which is in controversy? The office cannot be vacated without violating the express provision of the Constitution in relation to the tenure.

The judge is to hold the office during good behaviour. Does he hold it when it is taken from him? Has the Constitution said that he shall hold the office during good behaviour, unless Congress shall deem it expedient to abolish the office? If this limitation has been omitted, what authority have we to make it part of the Constitution?

The second plain, unequivocal provision on this subject is, that the compensation of the judge shall not be diminished during the time he continues in office. This provision is directly levelled at the power of the Legislature. They alone could reduce the salary. Could this provision have any other design than to place the judge out of the power of Congress? And yet how imperfect and how absurd the plan! You cannot reduce a part of the compensation, but you may extinguish the whole. What is the sum of this notable reasoning? You cannot remove a judge from office, but you may take the office from the judge. You cannot take the compensation from

the judge, but you may separate the judge from the compensation.

If your Constitution cannot resist reasoning like this, then indeed is it waste paper.

I will here turn aside, in order to consider a variety of arguments drawn from different sources, on which gentlemen on the other side have placed a reliance. I know of no order in which they can be classed, and I shall, therefore, take them up as I meet with them on my notes. It was urged by the honorable member from Virginia, to whom I have so frequently referred, that what was created by law might by law be annihilated. In the application of his principle, he disclosed views which I believe have not been contemplated by gentlemen of his party. He was industrious to show that not only the inferior courts, but the Supreme Court derives its existence from law. The President and Legislature exist under the Constitution. They came into being without the aid of a law. But, though the Constitution said there should be a Supreme Court, no judges could exist till the court was organized by a law. This argument, I presume, was pushed to this extent in order to give notice to the judges of the Supreme Court of their fate, and to bid them to prepare for their end.

I shall not attempt to discriminate between the tenure of the offices of the judges of the supreme and inferior courts. Congress has power to organize both descriptions of courts, and to limit the number of judges, but they have no power to limit or define the tenure of office. Congress creates the office, the President appoints the officer; but it is neither under Congress nor the President, but under the Constitution, that the judge claims to hold the office during good behaviour. The principle asserted does not in this case apply; the tenure of office is not created by law, and if the truth of the principle were admitted, it would not follow that the tenure of the office might be vacated by law. But the principle is not sound. I will show a variety of cases which will prove its fallacy. Among the obnoxious measures of the late Administration, was the loan of five millions, which was funded at eight per cent. The loan was created by a law and funded by law. Is the gentleman prepared to say that this debt, which was funded by a law of the former Legislature, may be extinguished by a law of the present? Can you, by calling the interest of this debt exorbitant and usurious, justify the reduction of it? Gentlemen admit that the salary of a judge, though established by a law, cannot be diminished by a law. The same thing must be allowed with respect to the salary of the President. Sir, the true principle is, that one Legislature may repeal the act of a former, in cases not prohibited by the Constitution. The correct question, therefore, is, whether the Legislature are not forbidden by the Constitution to abridge the tenure of a judicial office?

In order to avoid cases of a nature similar to those which I have put, the gentleman from Kentucky. (Mr. DAVIS,) and, after him, the gentleman from Virginia, endeavored to draw a dis-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

tion between laws executed and laws executory.

The distinction was illustrated by reference to the case of a State admitted by law into the Union. Here, it is said, the law is executed, and *functus officio*, and if you repeal it, still the State remains a member of the Union. But it was asked by the gentleman from Kentucky, supposing a law made to admit a State into the Union at a future time, before the time of admission arrived, could not the law be repealed? I will answer the question to the satisfaction of the gentleman, by stating a case which exists: By an ordinance of Congress, in the year 1787, Congress ordained, that when the population within the limits of a State within the Northwestern Territory should amount to sixty thousand souls, the district should be admitted as a member of the Union. Will the gentleman venture to doubt as to this case? Would he dare to tell the people of this country that Congress had the power to disfranchise them?

The law, in the case I refer to, is executory, though the event upon which it is to take effect is limited by population, and not by time.

But, sir, if there were anything in the principle, it has no influence upon the case to which it has been applied. A law has created the office of a judge, the judge has been appointed, and the office filled. The law is, therefore, executed, and upon the very distinction of the gentleman, cannot be repealed. The law fixing the compensation is executory, and so is that which establishes the salary of the President; but, though executory, they cannot be repealed. The distinction, therefore, is idle, and leaves the question upon the ground of the repeal being permitted or prohibited by the Constitution. I shall now advert, sir, to an argument urged with great force, and not a little triumph, by the honorable member from Virginia. This argument is derived from the word "hold," in the expression, the judge shall *hold* his office during good behaviour. It is considered as correlative to tenure. The gentleman remarks, that the Constitution provides that the President shall nominate the judge to his office, and when approved by the Senate, shall commission him. It is hence inferred that, as the President nominates and commissions the judge, the judge holds the office of the President; and that when the Constitution provides that the tenure of the office shall be during good behaviour, the provision applies to the President, and restrains the power which otherwise would result in consequence of the offices being holden of him, to remove the judges at his will. This is an argument, sir, which I should have thought that honorable member would have been the last person upon this floor to have adopted. It not only imputes to the President royal attributes, but prerogatives, derived from the rude doctrines of the feudal law.

Does the gentleman mean to contend that the President of these States, like the Monarch of England, is the fountain of honor, of justice, and of office? Does he mean to contend that the courts are the President's courts, and the judges

the President's judges? Does he mean to say, sir, that the Chief Magistrate is always supposed to be present in these courts, and that the judges are but the images of his justice? To serve the paltry purposes of this argument, would the gentleman be willing to infuse in our Constitution the vital spirit of the feudal doctrines? He does not believe, he cannot believe, that when the word "hold" was employed, any reference was had to its feudal import. The language of the Constitution furnishes no support to this feudal argument. These officers are not called the judges of the President, but the judges of the United States. They are a branch of the Government equally important, and designed to be co-ordinate with the President. If, sir, because the President nominates to office and commissions, the office is held of him, for a stranger reason where by patent he grants lands of the United States, the lands are held of him. And upon the grantee's dying without heirs, the lands would escheat not to the United States, but to the President. In England, the tenure of lands and offices is derived from the same principle. All lands are held mediately or immediately of the Crown, because they are supposed to have been originally acquired from the personal grant of the Monarch. It is the same of office, as the King is supposed to be the source of all offices. Having the power to grant, he has a right to define the terms of the grant. These terms constitute the tenure. When the terms fail, the tenure ceases, and the object of the grant reverts to the grantor. This gentleman has charged others with monarchical tendencies, but never have I before witnessed an attempt so bold and strong to incorporate in our Constitution a rank monarchical principle. If, sir, the principle of our Constitution on this subject be republican and not monarchical, and the judges hold their offices of the United States, and not of the President, then the application of his argument has all the force against the gentleman which he designed it should have against his adversaries. For, if the office be held of the United States, and the tenure of good behaviour was designed to restrain the power of those of whom the office was holden, it will follow that it was the intention to restrain the power of the United States.

We have been told by gentlemen that the principles we advocated tended to establish a sincere system in the country. Sir, I am as little disposed to be accessory to the establishment of such a system as any gentleman on this floor. But let me ask how this system is to be produced? We established judicial offices, to which numerous and important duties were assigned. A compensation has been allowed to the judges, which no one will say is immoderate, or disproportioned to the service to be rendered. These gentlemen first abolish the duties of the offices, then call the judges pensioners, and afterwards accuse us of establishing sinecures. There are no pensioners at present; if there should be any, they will be the creatures of this law. I have ever considered it as a sound and moral maxim that no one should avail himself of his own wrong. It is a maxim

H. OF R.

Judiciary System.

FEBRUARY, 1802.

which ought to be equally obligatory upon the public as upon the private man. In the present case, the judge offers you his service. You cannot say it is not worth the money you pay for it. You refuse to accept the service; and, after engaging to pay him while he continued to perform the service, you deny him his compensation, because he neglects to render services which you have prevented him from performing. Was injustice ever more flagrant? Surely, sir, the judges are innocent. If we did wrong, why should they be punished and disgraced? They did not pass the obnoxious law; they did not create the offices; they had no participation in the guilty business; but they were invited upon the faith of the Government to renounce their private professions, to relinquish the emoluments of other employments, and to enter into the service of the United States, who engaged to retain them during their lives, if they were guilty of no misconduct. They have behaved themselves well, unexceptionably well, when they find the Government rescinding the contract made with them, refusing the stipulated price of their labor, dismissing them from service, and in order to cover the scandalous breach of faith, stigmatizing them with names which may render them odious to their countrymen. Is there a gentleman on the floor of this House who would not revolt at such conduct in private life? Is there one who would feel himself justified, after employing a person for a certain time, and agreeing to pay a certain compensation, to dismiss the party from the service upon any caprice which altered his views, deny him the stipulated compensation, and to abuse him with opprobrious names for expecting the benefit of the engagement?

A bold attempt was made by one of the gentlemen from Virginia (Mr. GILES) to force to his aid the statute of William III. I call it a bold attempt, because the gentleman was obliged to rely upon his own assertion to support the ground of his argument. He stated that the clause in the Constitution was borrowed from a similar provision in the statute. I know nothing about the fact, but I will allow the gentleman its full benefit. In England, at an earlier period, the judges held their commissions during the good pleasure of the Monarch. The Parliament desired, and the King consented that the royal prerogative should be restrained. That the offices of judges should not depend on the will of the Crown alone, but upon the joint pleasure of the Crown and of Parliament. The King consented to part with a portion of his prerogative by relinquishing his power to remove the judges without the advice of his Parliament. By an express clause in the statute, he retained the authority to remove them with the advice of his Parliament. Suppose the clause had been omitted which reserved the right to remove upon the two Houses of Parliament, and the statute had been worded in the unqualified language of our Constitution, that the judges should hold their offices during good behaviour, would not the prerogative of removal have been abolished altogether? I will not say that the honorable member has been peculiarly unfortu-

nate in the employment of this argument, because, sir, it appears to me that most to which he had recourse, when justly considered, have operated against the cause they were designed to support.

The gentleman tells us that the Constitutional provision on this subject was taken from the statute of William. Will he answer me this plain question? Why do we find omitted in the Constitution that part of the statutory provision, which allowed the judges to be removed upon the address of the two branches of the Legislature? Does he suppose that the clause was not observed? Does he imagine that the provision was dropt through inadvertency? Will he impute so gross a neglect to an instrument, every sentence, and word, and comma of which, he has told us was so maturely considered, and so warily settled? No, sir, it is impossible; and give me leave to say, that if this part of the Constitution were taken from the statute, (and the gentleman from Virginia must have better information on the subject than I have,) that a stronger argument could not be adduced to show that it was the intention of those who framed the Constitution, by omitting that clause in the statute which made the judges tenants of their office at the will of Parliament, to improve in this country the English plan of judicature, by rendering the judges independent of the Legislature. And I shall have occasion, in the course of my observations, to show that the strongest reasons derived from the nature of our Government, and which do not apply to the English form, require the improvement to be made.

Upon this point, sir, we may borrow a few additional rays of light from the constitutions of Pennsylvania, of Delaware, and of some other States. In those States, it has been thought that there might be misconduct on the part of a judge, not amounting to an impeachable offence, for which he should be liable to be removed. Their constitutions, therefore, have varied from that of the United States, and rendered their judges liable to be removed upon the address of *two-thirds* of each branch of the Legislature. Does it not strike every mind that it was the intention of those constitutions to have judges independent of a *majority* of each branch of the Legislature? And I apprehend, also, that it may be fairly inferred, that it was understood in those States when their constitutions were formed, that even two-thirds of each branch of the Legislature would not have the power to remove a judge, whose tenure of office was during good behaviour, unless the power was expressly given to them by the Constitution. I cannot well conceive of anything more absurd in an instrument designed to last for centuries, and to bind the furious passions of party, than to fortify one pass to judicial independence, and to leave another totally unguarded against the violence of Legislative power.

It has been urged by the gentleman from Virginia that our admission, that Congress has power to modify the office of a judge, leads to the conclusion, that they have the power to abolish the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

office; because, by paring away their powers, they may at length reduce them to a shadow, and leave them as humble and as contemptible as a court of *pie-poudre*. The office of a judge consists of judicial powers, which he is appointed to execute. Every law which is passed increases or diminishes those powers, and so far modifies the office; nay, it is competent for the Legislature to prescribe additional duties or to dispense with unnecessary services, which are connected with the office of judge. But this power has its bounds. You may modify the office to any extent which does not affect the independence of the judge. The judge is to hold the office during good behaviour; now modify as you please, so that you do not infringe this Constitutional provision.

Do you ask me to draw a line and say, thus far you shall go and no further? I admit no line can be drawn. It is an affair of sound and *bona fide* discretion, because a discretion on the subject is given to the Legislature; to argue upon the abuse of that discretion is adopting a principle subversive of all legitimate power.

The Constitution is predicated upon the existence of a certain degree of integrity in man. It has trusted powers liable to enormous abuse, if all political honesty be discarded. The Legislature is not limited in the amount of the taxes which they have a right to impose, nor as to the objects to which they are to be applied. Does this power give us the property of the country, because, by taxes, we might draw it into the public coffers, and then cut up the Treasury and divide the spoils? Is there any power in respect to which a precise line can be drawn between the discreet exercise and the abuse of it?

I can only say, therefore, on this subject, that every man is acquitted to his own conscience who *bona fide* does not intend, and who sincerely does not believe that, by the law which he is about to pass, he interferes with the judges holding their offices during good behaviour.

I am now brought, Mr. Chairman, to take notice of some remarks which fell from the gentleman from Virginia, which do not belong to the subject before us, but are of sufficient importance to deserve particular attention. He called our attention, in a very impressive manner, to the state of parties in this House at the time when the act of the last session passed. He describes us in a state of blind paroxysm, incapable of discerning the nature or tendency of the measures we were pursuing; that a majority of the House were struggling to counteract the expression of the public will, in relation to the person who was to be the Chief Magistrate of the country.

I did suppose, sir, that this subject was at an end; and I did imagine that as gentlemen had accomplished their object, they would have been satisfied. But as the subject is again renewed, we must be allowed to justify our conduct. I know not what the gentleman calls an expression of the public will. There were two candidates for the office of President, who were presented to the House of Representatives with equal suffrages. The Constitution gave us the right, and made it

our duty to elect that one of the two whom we thought preferable. A public man is to notice the public will, as Constitutionally expressed. The gentleman from Virginia, and many others, may have had their preference, but that preference of the public will did not appear by its Constitutional expression. Sir, I am not certain that either of those candidates had a majority of the country in his favor. Excluding the State of South Carolina, the country was equally divided. We know that parties in that State were nearly equally balanced, and the claims of both the candidates were supported by no other scrutiny into the public will, than our official return of votes. Those votes are very imperfect evidence of the true will of a majority of the nation. They resulted from political intrigue and artificial arrangements.

When we look at the votes, we must suppose that every man in Virginia voted the same way. These votes are received as a correct expression of the public will. And yet we know that, if the votes of that State were apportioned according to the several voices of the people, that, at least, seven out of twenty-one would have been opposed to the successful candidates. It was the suppression of the will of one-third of Virginia which enables gentlemen now to say, that the present Chief Magistrate is the man of the people. I consider that as the public will, which is expressed by Constitutional organs. To that will I bow and submit. The public will, thus manifested, gave to the House of Representatives the choice of the two men for President. Neither of them was the man whom I wished to make President; but my election was confined, by the Constitution, to one of the two, and I gave my vote to the one whom I thought was the greater and better man. That vote I repeated, and in that vote I should have persisted, had I not been driven from it by imperious necessity. The prospect ceased of the vote being effectual, and the alternative only remained of taking one man for President, or having no President at all. I chose, as I then thought, the lesser evil.

From the scene in this House, the gentleman carried us to one in the Senate. I should blush, sir, for the honor of the country, could I suppose that the law designed to be repealed owed its support in that body to the motives which have been indicated. The charge designed to be conveyed, not only deeply implicates the integrity of individuals of the Senate, but of the person who was then the Chief Magistrate. The gentleman, going beyond all precedent, has mentioned the names of members of that body, to whom commissions issued for offices not created by the bill before them, but which that bill, by the promotions it afforded, was likely to render vacant. He has considered the scandal of the transaction as aggravated by the issuing of commissions for offices not actually vacant, upon the bare presumption that they would become vacant, by the incumbents accepting commissions for higher offices which were issued in their favor. The gentleman has particularly dwelt upon the indecent appearance

of the business, from two commissions being held by different persons at the same time for the same office.

I beg that it will be understood, that I mean to give no opinion as to the regularity of granting a commission for a judicial office, upon the probability of a vacancy before it is actually vacant: but I shall be allowed to say, that so much doubt attends the point, that an innocent mistake might be made on the subject. I believe, sir, it has been the practice to consider the acceptance of an office as relating to the date of the commission. The officer is allowed his salary from that date, upon the principle that the commission is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuse, but where there was a suspicion of abuse, I presume the Government would depart from it. Admitting the office to pass by the commission, and the acceptance to relate to its date, it then does not appear very incorrect in the case of a commission for the office of a circuit judge, granted to a district judge, as the acceptance of the commission for the former office relates to the date of the commission, to consider the latter office as vacant from the same time. The offices are incompatible. You cannot suppose the same person in both offices at the same time. From the moment, therefore, that you consider the office of circuit judge filled by a person who holds the commission of district judge, you must consider the office of district judge as vacated. The grant is contingent. If the contingency happen, the office vests from the date of the commission; if the contingency does not happen, the grant is void. If this reasoning be sound, it was not irregular in the late Administration, after granting a commission to a district judge, for the place of a circuit judge, to make a grant of the office of the district judge, upon the contingency of his accepting the office of circuit judge.

I now, sir, return to that point of the charge which was personal in its nature, and of infinitely the most serious import. It is a charge, as to which we can only ask, is it true? If it be true, it cannot be excused; it cannot be palliated; it is vile, profligate corruption, which every honest mind will execrate. But, sir, we are not to condemn till we have evidence of the fact. If the offence be serious, the proof ought to be plenty. I will consider the evidence of the fact upon which the honorable member has relied, and I will show him, by the application of it to a stronger case, that it is of a nature to prove nothing.

Let me first state the principal case. Two gentlemen of the Senate, Mr. Read, of South Carolina, and Mr. Green, of Rhode Island, who voted in favor of the law of last session, each received an appointment to the place of district judge, which was designed to be vacated by the promotion of the district judge to the office of circuit judge. The gentleman conveyed to us a distinct impression of his opinion, that there was an understanding between these gentlemen and the President, and that the offices were the promised price of their votes.

I presume, sir, the gentleman will have more

charity in the case which I am about to mention, and he will for once admit that public men ought not to be condemned upon loose conclusions, drawn from equivocal presumptions.

The case, sir, to which I refer, carries me once more to the scene of the Presidential election. I should not have introduced it into this debate, had it not been called up by the honorable member from Virginia. In that scene I had my part; it was a part not barren of incident, and which has left an impression which cannot easily depart from my recollection. I know who were rendered important characters, either from the possession of personal means, or from the accident of political situation. And now, sir, let me ask the honorable member what his reflections and belief will be, when he observes that every man, on whose vote the event of the election hung, has since been distinguished by Presidential favor? I fear, sir, I shall violate the decorum of Parliamentary proceeding, in the mentioning of names; but I hope the example which has been set me will be admitted as an excuse. Mr. Charles Pinckney, of South Carolina, was not a member of the House, but he was one of the most active, efficient, and successful promoters of the election of the present Chief Magistrate. It was well ascertained that the votes of South Carolina were to turn the equal balance of the scales. The zeal and industry of Mr. Pinckney had no bounds. The doubtful politics of South Carolina were decided, and her votes cast into the scale of Mr. Jefferson. Mr. Pinckney has since been appointed Minister Plenipotentiary to the Court of Madrid; an appointment as high and honorable as any within the gift of the Executive. I will not deny that this preferment is the reward of talents and services, although, sir, I have never yet heard of the talents or services of Mr. Charles Pinckney. In the House of Representatives I know what was the value of the vote of Mr. Claiborne, of Tennessee. The vote of a State was in his hands. Mr. Claiborne has since been raised to the high dignity of Governor of the Mississippi Territory. I know how great, and how greatly felt, was the importance of the vote of Mr. Linn, of New Jersey. The delegation of the State consists of five members. Two of the delegation were decidedly for Mr. Jefferson; two were decidedly for Mr. Burr. Mr. Linn was considered as inclining to one side, but still doubtful. Both parties looked up to him for the vote of New Jersey. He gave it to Mr. Jefferson, and Mr. Linn has since had the profitable office of supervisor of his district conferred upon him. Mr. Lyon, of Vermont, was, in this instance, an important man. He neutralized the vote of Vermont. His absence alone would have given the vote of a State to Mr. Burr. It was too much to give an office to Mr. Lyon; his character was low. But Mr. Lyon's son has been handsomely provided for in one of the Executive offices. I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston, of New York. I knew well, full well I knew the consequence of this gentlemen. His means were not limited to his own vote; nay, I always considered more than the vote of New

FEBRUARY, 1802.

Judiciary System.

H. OF R.

York within his power. Mr. Livingston has been made the attorney for the district of New York; the road of preferment has been opened to him, and his brother has been raised to the distinguished place of Minister Plenipotentiary to the French Republic.

This catalogue might be swelled to a much greater magnitude; but I fear, Mr. Chairman, were I to proceed farther, it might be supposed that I myself harbored the uncharitable suspicions of the integrity of the Chief Magistrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my design alone to banish from the mind of the honorable member from Virginia. It would be doing me great injustice to suppose that I have the smallest desire, or have had the remotest intention to tarnish the fame of the present Chief Magistrate, or of any of the honorable gentlemen who have been the objects of his favor, by the statement which I have made; my motive is of an opposite nature. The late President appointed gentlemen to office to whom he owed no personal obligations, but who only supported what has been considered as a favorite measure. This has been assumed as a sufficient ground, not only of suspicion, but of condemnation. The present Executive, leaving scarcely an exception, has appointed to office, or has, by accident, indirectly gratified every man who had any distinguished means in the competition for the Presidential office, of deciding the election in his favor. Yet, sir, all this furnishes too feeble a presumption to warrant me to express a suspicion of the integrity of a great officer, or of the probity of honorable men, in the discharge of the high functions which they have derived from the confidence of their country. I am sure, sir, in this case, the honorable member from Virginia is as exempt from any suspicion as myself. And I shall have accomplished my whole object, if I induce that honorable member, and other members of the Committee, who entertain his suspicions as to the conduct of the late Executive, to review the ground of those suspicions, and to consider that in a case furnishing much stronger ground for the presumption of criminality, they have an unshaken belief, an unbroken confidence in the purity and fairness of the Executive conduct.

I return again to the subject before the Committee, from the unpleasant digression to which I was forced to submit, in order to repel insinuations which were calculated to have the worst effect, as well abroad as within the walls of this House. I shall now cursorily advert to some arguments of minor importance, which are supposed to have some weight, by gentlemen on the other side. It is said, that if the courts are sanctuaries, and the judges cannot be removed by law, it would be in the power of a party to create a host of them to live as pensioners on the country. This argument is predicated upon an extreme abuse of power, which can never fairly be urged to restrain the legitimate exercise of it: as well might it be urged that a subsequent Congress had a right to reduce the salary of a judge, or of

the President, fixed by a former Congress; because, if the right did not exist, one Congress might confer a salary of five hundred thousand or one million dollars, to the impoverishment of the country. It will be time enough to decide upon those extreme cases when they occur. We are told that the doctrine we contend for, enables one Legislature to derogate from the power of another. That it attributes to a former, a power which it denies to a subsequent Legislature.

This is not correct. We admit that this Congress possesses all the power possessed by the last Congress. That Congress had a power to establish courts; so has the present. That Congress had not, nor did it claim the power to abolish the office of a judge while it was filled. Though they thought five judges under the new system sufficient to constitute the Supreme Court, they did not attempt to touch the office of either of the six judges. Though they considered it more convenient to have circuit judges in Kentucky and Tennessee than district judges, they did not lay their hands upon the offices of the six judges. We therefore deny no power to this Congress which was not denied to the last. An honorable member from Virginia seriously expressed his alarm, lest the principles we contended for should introduce into the country a privileged order of men. The idea of the gentleman supposes that every office not at will establishes a privileged order. The judges have their offices for one term; the President, the Senators, and the members of this House, for different terms. While these terms endure, there is a privilege to hold the places, and no power exists to remove. If this be what the gentleman means by a privileged order, and he agrees that the President, the Senators, and the members of this House, belong to privileged orders, I shall give myself no trouble to deny that the judges fall under the same description; and I believe that the gentleman will find it difficult to show, that in any other manner they are privileged. I did not suppose that this argument was so much addressed to the understandings of gentlemen upon this floor, as to the prejudices and passions of people out of doors.

It was urged with some impression by the honorable member from Virginia, to whom I last referred, that the position that the office of a judge might be taken from him by law, was not a new doctrine. That it was established by the very act now designed to be repealed, which was described in glowing language to have inflicted a gaping wound on the Constitution, and to have stained with its blood the pages of our statute book. It shall be my task, sir, to close this gaping wound, and to wash from the pages of our statute book the blood with which they are stained. It will be an easy task to show to you the Constitution without a wound, and the statute book without a stain.

It is, sir, the twenty-seventh section of the bill of the last session which the honorable member considers as having inflicted the ghastly wound on the Constitution, of which he has so feelingly spoken. That section abolishes the ancient cir-

cuit courts. But, sir, have we contended, or has the gentleman shown, that the Constitution prohibits the abolition of a court when you do not materially affect, or in any degree impair the independence of a judge? A court is nothing than a place where a judge is directed more to discharge certain duties. There is no doubt you may erect a new court and direct it to be holden by the judges of the Supreme or of the District Courts. And if it should afterwards be your pleasure to abolish that court, it cannot be said that you destroy the offices of the judges by whom it was appointed that the courts should be holden.

Thus it was directed by the original judicial law, that a circuit court should be holden at Yorktown in the district of Pennsylvania. This court was afterwards abolished, but it was never imagined that the office of any judge was affected. Let me suppose that a State is divided into two districts, and district courts established in each, but that one judge is appointed by law to discharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is abolished. In this case will it be said, that the office of the judge is destroyed, or his independence affected? The error into which gentlemen have fallen on this subject has arisen from their taking for granted what they have not attempted to prove, and what cannot be supported, that the office of a judge, and any court in which he officiates, are the same thing. It is most clear, that a judge may be authorized and directed to perform duties in several courts, and that the discharging him from the performance of duty in one of those courts cannot be deemed an infringement of his office. The case of the late circuit courts as plainly illustrates the argument, and as conclusively demonstrates its correctness, as any case which can be put. There were not nominally any judges of the circuit court. The court was directed to be holden by the judges of the supreme and of the district courts. The judges of these two courts were associated and directed to perform certain duties; when associated, and in the performance of those duties, they were denominated the circuit court. This court is abolished; the only consequence is, that the judges of the supreme and district courts are discharged from the performance of the joint duties which were previously imposed upon them. But is the office of one judge of the supreme or of the district courts infringed? Can any judge say, in consequence of the abolition of the circuit courts, I no longer hold my office during good behaviour? On this point, it was further alleged by the same honorable member, that the law of the last session inflicted another wound on the Constitution by abolishing the district courts of Kentucky and Tennessee. The gentleman was here deceived by the same fallacy which misled him on the subject of the circuit courts. If he will give himself the trouble of carefully reviewing the provisions of the law, he will discern the sedulous attention of the Legislature to avoid the infringement of the offices of those judges. I believe the gentle-

man went so far as to charge us with appointing by law those judges to new offices.

The law referred to, said Mr. B., establishes a circuit, comprehending Kentucky, Tennessee, and the district of Ohio. The duties of the court of this circuit are directed to be performed by a circuit judge and the two district judges of Kentucky and Tennessee. Surely it is competent for the Legislature to create a court, and to direct that it shall be holden by any of the existing judges. If the Legislature had done with respect to all the district judges what they have with respect to those of Kentucky and Tennessee, I am quite certain that the present objection would have appeared entirely groundless. Had they directed that all the circuit courts should be held by the respective judges within the circuits, gentlemen would have clearly seen that this was only an imposition of a new duty, and not an appointment to a new office.

It will be recollected, said Mr. B., that under the old establishment, the district judges of Kentucky and Tennessee were invested generally with the powers of the circuit judges. The ancient powers of those judges are scarcely varied by the late law, and the amount of the change is, that they are directed to exercise those powers in a court formerly called a district, but now a circuit court, and at other places than those to which they were formerly confined. But the district judge nominally remains; his office both nominally and substantially exists, and he holds it now as he did before, during good behaviour. I will refer gentlemen to different provisions in the late law, which will show beyond denial that the Legislature carefully and pointedly avoided the act of abolishing the offices of those judges.

The seventh section of the law provides that the court of the sixth circuit shall be composed of a circuit judge, "and the judges of the district courts of Kentucky and Tennessee." It is afterwards declared in the same section, "that there shall be appointed, in the sixth circuit, a judge of the United States, to be called a circuit judge, who, together with the district judges of Tennessee and Kentucky, shall hold the circuit courts hereby directed to be holden within the same circuit." And, finally, in the same section it is provided, "that whenever the office of district judge in the districts of Kentucky and Tennessee respectively shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit, who, together with the circuit judge first aforesaid, shall compose the circuit court of the said circuit." When the express language of the law affirms the existence of the office and of the officer, by providing for the contingency of the officer ceasing to fill the office, with what face can gentlemen contend that the office is abolished? They who are not satisfied upon this point I despair of convincing upon any other.

Upon the main question, said Mr. B., whether the judges hold their offices at the will of the Legislature, an argument of great weight, and,

FEBRUARY, 1802.

Judiciary System.

H. OF R.

according to my humble judgment, of irresistible force, still remains. The Legislative power of the Government is not absolute, but limited. If it be doubtful whether the Legislature can do what the Constitution does not explicitly authorize; yet there can be no question that they cannot do what the Constitution expressly prohibits. To maintain, therefore, the Constitution, the judges are a check upon the Legislature. The doctrine I know is denied, and it is therefore incumbent upon me to show that it is sound.

It was once thought by gentlemen who now deny the principle, that the safety of the citizen and of the States rested upon the power of the judges to declare an unconstitutional law void. How vain is a paper restriction, if it confers neither power nor right! Of what importance is it to say, Congress are prohibited from doing certain acts, if no legitimate authority exists in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the consequences which would follow from establishing the principle, that Congress have the exclusive right to decide upon their own powers? This principle admitted, does any Constitution remain? Does not the power of the Legislature become absolute and omnipotent? Can you talk to them of transgressing their powers when no one has a right to judge of those powers but themselves? They do what is not authorized, they do what is inhibited, nay, at every step they trample the Constitution under foot; yet their acts are lawful and binding, and it is treason to resist them. How ill, sir, do the doctrines and professions of these gentlemen agree! They tell us they are friendly to the existence of the States; that they are the friends of a federative, but the enemies of a consolidated, General Government, and yet, sir, to accomplish a paltry object, they are willing to settle a principle which, beyond all doubt, would eventually plant a consolidated Government, with unlimited power, upon the ruins of the State governments. Nothing can be more absurd than to contend that there is a practical restraint upon a political body who are answerable to none but themselves for the violation of the restraint, and who can derive from the very act of violation, undeniable justification of their conduct.

If, said Mr. B., you mean to have a Constitution, you must discover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the Legislature which contravene the instrument. Does the power reside in the States? Has the Legislature of a State a right to declare an act of Congress void? This would be erring upon the opposite extreme. It would be placing the General Government at the feet of the State governments. It would be allowing one member of the Union to control all the rest. It would inevitably lead to civil dissension and a dissolution of the General Government. Will it be pretended that the State courts have the exclusive right of deciding upon the validity of our laws? I admit that they have the right to declare an act of Congress void. But this right they enjoy in practice, and it ever essentially must

exist, subject to the revision and control of the courts of the United States. If the State courts definitively possessed the right of declaring the invalidity of the laws of this Government, it would bring us in subjection to the States. The judges of those courts, being bound by the laws of the State, if a State declared an act of Congress unconstitutional, the law of the State would oblige its courts to determine the law invalid. This principle would also destroy the uniformity of obligation upon all the States, which should attend every law of this Government. If a law were declared void in one State, it would exempt the citizens of that State from its operation, whilst obedience was yielded to it in the other States. I go further, and say, if the States or State courts had a final power of annulling the acts of this Government, its miserable and precarious existence would not be worth the trouble of a moment to preserve. It would endure but a short time, as a subject of derision, and, wasting into an empty shadow, would quickly vanish from our sight. Let me now ask if the power to decide upon the validity of our laws resides with the people? Gentlemen cannot deny this right to the people. I admit that they possess it. But if, at the same time, it does not belong to the courts of the United States, where does it lead the people? It leads them to the gallows. Let us suppose that Congress, forgetful of the limits of their authority, pass an unconstitutional law. They lay a direct tax upon one State and impose none upon the others. The people of the State taxed contest the validity of the law. They forcibly resist its execution. They are brought by the Executive authority before the courts upon charges of treason. The law is unconstitutional, the people have done right, but the court are bound by the law, and obliged to pronounce upon them the sentence which it inflicts. Deny to the courts of the United States the power of judging upon the constitutionality of our laws, and it is vain to talk of its existing elsewhere. The infractors of the laws are brought before these courts, and if the courts are implicitly bound, the invalidity of the laws can be no defence. There is, however, Mr. Chairman, still a stronger ground of argument upon this subject. I shall select one or two cases to illustrate it. Congress are prohibited from passing a bill of attainder; it is also declared in the Constitution, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the party attainted." Let us suppose that Congress pass a bill of attainder, or they enact that any one attainted of treason shall forfeit to the use of the United States all the estate which he held in any lands or tenements. The party attainted is seized and brought before a federal court, and an award of execution passed against him. He opens the Constitution and points to this line, "no bill of attainder or *ex post facto* law shall be passed." The attorney for the United States reads the bill of attainder.

The court are bound to decide, but they have only the alternative of pronouncing the law or the Constitution invalid. It is left to them only to

say that the law vacates the Constitution, or the Constitution avoids the law. So in the other case stated, the heir, after the death of his ancestor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law by which it is confiscated is shown. The Constitution gave no power to pass such a law. On the contrary, it expressly denied it to the Government. The title of the heir is rested on the Constitution, the title of the Government on the law. The effect of one destroys the effect of the other; the court must determine which is effectual.

There are many other cases, Mr. Chairman, of a similar nature, to which I might allude. There is the case of the privilege of habeas corpus, which cannot be suspended but in times of rebellion or of invasion. Suppose a law prohibiting the issuing of the writ at a moment of profound peace. If in such case the writ were demanded of a court, could they say, it is true the Legislature were restrained from passing the law, suspending the privilege of this writ, at such a time as that which now exists, but their mighty power has broken the bonds of the Constitution, and fettered the authority of the court. I am not, sir, disposed to vaunt, but standing on this ground I throw the gauntlet to any champion upon the other side. I call upon them to maintain, that in a collision between a law and the Constitution, the judges are bound to support the law, and annul the Constitution. Can the gentlemen relieve themselves from this dilemma? Will they say, though a judge has no power to pronounce a law void, he has a power to declare the Constitution invalid.

The doctrine for which I am contending is not only clearly inferable from the plain language of the Constitution, but by law has been expressly declared and established in practice since the existence of the Government.

The second section of the third article of the Constitution expressly extends the judicial power to all cases arising under the Constitution, the laws, &c. The provision in the second clause of the sixth article leaves nothing to doubt. "This Constitution, and the laws of the United States which shall be made in pursuance thereof, &c. shall be the supreme law of the land." The Constitution is absolutely the supreme law. Not so the acts of the Legislature. Such only are the law of the land as are made in pursuance of the Constitution.

I beg the indulgence of the Committee one moment, while I read the following provision from the twenty-fifth section of the judicial act of the year seventeen hundred and eighty-nine:

"A final judgment or decree in any suit in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, &c. may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon a writ of error."

Thus, as early as the year 1789, among the first

acts of the Government, the Legislature explicitly recognised the right of a State court to declare a treaty, a statute, and authority exercised under the United States, void, subject to the revision of the Supreme Court of the United States; and it has expressly given the final power to the Supreme Court to affirm a judgment which is against the validity either of a treaty, statute, or an authority of the Government.

I humbly trust, Mr. Chairman, that I have given abundant proofs from the nature of our Government, from the language of the Constitution, and from Legislative acknowledgment, that the judges of our courts have the power to judge and determine upon the constitutionality of our laws.

Let me now suppose, that in our frame of government the judges are a check upon the Legislature; that the Constitution is deposited in their keeping. Will you say afterwards that their existence depends upon the Legislature? That the body whom they are to check has the power to destroy them? Will you say that the Constitution may be taken out of their hands, by a power the most to be distrusted, because the only power which could violate it with impunity? Can any thing be more absurd than to admit, that the judges are a check upon the Legislature, and yet to contend that they exist at the will of the Legislature? A check must necessarily imply a power commensurate to its end. The political body designed to check another must be independent of it, otherwise there can be no check. What check can there be when the power designed to be checked can annihilate the body which is to restrain it?

I go farther, Mr. Chairman, and take a still stronger ground. I say, in the nature of things, the dependence of the judges upon the Legislature, and their right to declare the acts of the Legislature void, are repugnant and cannot exist together. The doctrine, sir, supposes two rights—first, the right of the Legislature to destroy the office of the judge, and the right of the judge to vacate the act of the Legislature. You have a right to abolish, by a law, the offices of the judges of the circuit court; they have a right to declare the law void. It unavoidably follows, in the exercise of these rights, either that you destroy their rights, or that they destroy yours. This doctrine is not an harmless absurdity, it is a most dangerous heresy. It is a doctrine which cannot be practised without producing not discord only, but bloodshed. If you pass the bill upon your table the judges have a Constitutional right to declare it void. I hope they will have courage to exercise that right; and if, sir, I am called upon to take my side, standing acquitted in my conscience and before my God, of all motives but the support of the Constitution of my country, I shall not tremble at the consequences.

The Constitution may have its enemies, but I know that it has also its friends. I beg gentlemen to pause before they take this rash step. There are many, very many, who believe, if you strike this blow, you inflict a mortal wound on the Constitution. There are many now willing to spill their blood to defend that Constitution. Are gen-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

tle men disposed to risk the consequences? Sir, I mean no threats, I have no expectation of appalling the stout hearts of my adversaries; but if gentlemen are regardless of themselves, let them consider their wives and children, their neighbors and their friends. Will they risk civil dissension, will they hazard the welfare, will they jeopardize the peace of the country, to save a paltry sum of money—less than thirty thousand dollars?

Mr. Chairman, I am confident that the friends of this measure are not apprized of the nature of its operation, nor sensible of the mischievous consequences which are likely to attend it. Sir, the morals of your people, the peace of the country, the stability of the Government, rest upon the maintenance of the independence of the Judiciary. It is not of half the importance in England, that the judges should be independent of the Crown, as it is with us, that they should be independent of the Legislature. Am I asked, would you render the judges superior to the Legislature? I answer, no, but co-ordinate. Would you render them independent of the Legislature? I answer, yes, independent of every power on earth, while they behave themselves well. The essential interests, the permanent welfare of society, require this independence. Not, sir, on account of the judge—that is a small consideration, but on account of those between whom he is to decide. You calculate on the weaknesses of human nature, and you suffer the judge to be dependent on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependent judge cannot be impartial. Independence is, therefore, essential to the purity of your Judicial tribunals.

Let it be remembered, that no power is so sensibly felt by society, as that of the Judiciary. The life and property of every man is liable to be in the hands of the judges. Is it not our great interest to place our judges upon such high ground, that no fear can intimidate, no hope can seduce them. The present measure humbles them in the dust, it prostrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate, it is this consequence which I deeply deplore. What does reason, what does argument avail, when party spirit presides? Subject your bench to the influence of this spirit, and justice bids a final adieu to your tribunals. We are asked, sir, if the judges are to be independent of the people? The question presents a false and delusive view. We are all the people. We are, and as long as we enjoy our freedom, we shall be divided into parties. The true question is, Shall the Judiciary be permanent, or fluctuate with the tide of public opinion? I beg, I implore gentlemen to consider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the spirit of party. But let their existence depend upon the support of the power of a certain set of men, and they cannot be impartial. Justice will be trodden under foot. Your courts will lose all public con-

fidence and respect. The judges will be supported by their partisans, who in their turn will expect impunity for the wrongs and violence they commit. The spirit of party will be inflamed to madness; and the moment is not far off when this fair country is to be desolated by civil war.

Do not say, that you render the judges dependent only on the people. You make them dependent on your President. This is his measure. The same tide of public opinion which changes a President, will change the majorities in the branches of the Legislature. The Legislature will be the instrument of his ambition, and he will have the courts as the instrument of his vengeance. He uses the Legislature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the Government will be concentrated in the hands of one man, who will dare to act with more boldness, because he will be sheltered from responsibility. The independence of the Judiciary was the felicity of our Constitution. It was this principle which was to curb the fury of party upon sudden changes. The first moments of power, gained by a struggle, are the most vindictive and intemperate. Raised above the storm, it was the Judiciary which was to control the fiery zeal, and to quell the fierce passions of a victorious faction.

We are standing on the brink of that revolutionary torrent, which deluged in blood one of the fairest countries of Europe.

France had her National Assembly, more numerous and equally popular with our own. She had her tribunals of justice, and her juries. But the Legislature and her courts were but the instruments of her destruction. Acts of proscription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party, and you break down the mounds which defend you from this torrent. I am done. I should have thanked my God for greater power to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck, we may bid a final adieu to the Constitution.

Mr. RANDOLPH said, that he did not rise for the purpose of assuming the gauntlet which had been so proudly thrown by the Goliath of the adverse party; not but that he believed even his feeble powers, armed with the simple weapon of truth, a sling and a stone, capable of prostrating on the floor that gigantic boaster, armed cap-a-pie as he was; but that he was impelled by the desire to rescue from misrepresentation the arguments of his colleague, (Mr. GILES,) who was now absent during indisposition. That absence, said Mr. R., is a subject of peculiar regret to me, not only because I could have wished his vindication to have devolved on abler hands, but because he had today lost the triumph which, yesterday, he could not have failed to enjoy; that of seeing his opponent reduced to the wretched expedient of perverting and mutilating his arguments through inability to meet and answer them. Mr. R. said,

that this was the strongest proof which could be given of inadequacy to refute any position. He, therefore, left to the gentleman the victory which he had obtained over his own arguments; but, while he felt no disposition to disturb him in this enjoyment, he hoped he should be permitted to correct some of the misstatements which had been made of his colleague's observations.

In the view which he had taken of the conduct of our predecessors, in the chain of whose measures the law now proposed to be repealed formed an important link, the funding of the debt of the United States, and the assumption of those of the individual States, were comprehended. An attempt is made to construe this disapprobation into a design of violating the public faith. Mr. R. denied that one syllable had fallen from his colleague, indicative of a right, or disposition on his part, to withhold the payment of any public engagements. Against those destructive measures his colleague had raised his voice; against the fatal and absurd maxim, that a public debt was a public blessing, he had indeed protested; but not a word escaped his lips, because no such sentiment lurked in his heart, which could be construed into a declaration that the present Legislature possessed the same power over the engagements of former Legislatures which they possessed over ordinary laws; that of modifying or abrogating them with the same freedom which had been exercised in their establishment. Since the gentleman had betrayed such peculiar sensibility on the subject of the debt, Mr. R. relied on his support, when a measure should be brought forward for its final and rapid extinguishment, not by a sponge, but by a fair reimbursement of one hundred cents for every dollar due.

On other topics, the Algerine depredations, Indian war, &c., it might as easily be shown that the representation had been equally unfair. He should not dwell upon them, because they were less calculated to make the unfavorable impression on the public mind, which had been attempted on the subject of the debt. He would dismiss them with a single remark: the uses to which these incidents were applied, and not the events themselves, formed the subject of his colleague's animadversions.

But to the long catalogue of unpopular acts which have deprived their authors of the public confidence, the gentleman tells us, he and his friends were "goaded" by the clamor of their opponents. He solemnly assures us, that in the adoption of those measures they clearly foresaw the downfall of their power; but impressed with a conviction that they were essential to the public good, and disdaining all considerations of a personal nature, they nobly sacrificed their political existence on the altar of the general welfare; and we are called upon now to revere in them the self-immolated victims at the shrine of patriotism. These are, indeed, lofty pretensions; and although I shall not peremptorily deny, in this age of infidelity, I may be permitted to doubt them; for I call upon this Committee to decide whether, in this day's discussion, the gentleman has evinced

that purity of heart, or that elevation of sentiment, which could justify me in clothing him with the attributes of Curtius or of the Decii?

In the wide range which the gentleman has taken, the question how far the common law of England is the law of the United States in their confederate capacity, has been raised. We are told "that the terms of the common law abound in every page, and in almost every line of the Constitution; that without it, that instrument is unintelligible and inefficient; that, therefore, it attaches to the Constitution. Moreover, that it is the law of the States, by the acknowledged principle, that colonists carry to their newly adopted country, so much of the law of their parent State, as is applicable to their new condition." That the common law is to settle the meaning of common law phrases, few will feel disposed to deny: that when the Constitution uses the term "court," it does not mean "jury," and that by "jury," is not intended to express court, seems plain enough to any capacity. But because the common law is to be resorted to for an explanation of these and similar terms, does it follow that that indefinite and undefinable body of law is the irrevocable law of the land? The sense of a most important phrase, "*direct tax*," as used in the Constitution, has been, it is believed, settled by the acceptance of Adam Smith; an acceptance, too, peculiar to himself. Does the Wealth of Nations, therefore, form a part of the Constitution of the United States? Will gentlemen please to specify, also, whether that common law which they have adopted for the United States, be the common law as it stood modified by statute in the reign of Elizabeth and James the First, prior to the existence of the act of *habeas corpus*, divested of all the salutary provisions afterwards introduced at the Revolution; or, whether it be the common law of the time of George the Second? Whether we are to be governed by the common law of Sir Walter Raleigh and Captain Smith, or that which was imported by Governor Oglethorpe; or on which of the intermediate periods they have chosen as fixing the common law of these States?

I wish especially to know, whether the common law of libels which attaches to this Constitution, be the doctrine laid down by Lord Mansfield, or that which has immortalized Mr. Fox? And whether the jurisdiction thus usurped over the press, in defiance of an express amendatory clause, which must be construed to annul every previous provision, if any such there be, which comes within its purview, be an example adduced to illustrate the position, which I certainly shall never contest, that "what the Constitution does not permit to be done by direct means, cannot, constitutionally, be indirectly effected?" But to reconcile us to this usurpation, we are informed, that the principles of the common law are favorable only to liberty; that they neither have been, nor can be enlisted in the cause of persecution. If I did not misunderstand the gentleman, he said, that no prosecution had occurred under that law. He has therefore never heard of the case of Luther Baldwin. I speak of the New Jersey case; nor

FEBRUARY, 1802.

Judiciary System.

H. OF R.

that of Williams. Other instances, I learn from high authority, have taken place in Vermont.

Mr. R. apologized for detaining the Committee so long on topics irrelevant to the subject. He said he would offer some reasons in favor of the expediency and constitutionality of the bill before them. He had not heard any argument on this occasion more satisfactory to him than those urged at the time when the law was passed, in favor of the expediency of the measure. He had waited in expectation that gentlemen would endeavor to prove, that the former judges, under a different arrangement, would be inadequate to the duty of holding the circuit courts. A belief that every real objection to the former system might have been obviated by some modification of this kind, had induced him to dissent to the passage of the law in the first instance. That dissent was recorded on the journals of the House; and so many members of the Committee stood in the same predicament, that if a sense of his duty to himself and the House were insufficient to deter him, that fact alone, of which the gentleman was himself a witness, ought to have repressed the aspersions which he cast upon a great portion of the Committee, whom he represented as the mere puppets of Executive influence, acting upon no convictions of their own, but played off by an invisible, although not unknown hand. Yes, sir, objections to this system are treated as if altogether unheard of until of late, although a very formidable minority have uniformly been found opposed to it. Nevertheless, this is altogether the work of the Executive, who, by the slightest expression of disapprobation, could yet arrest the measure and save the Constitution.

Mr. R. said he was unhackneyed in the ways of majorities; his experience had been very limited; but was he to conclude, from these observations, that it was the common law, the uniform usage heretofore of this Government, for this House to be the mere instrument for effecting the Executive will, a Chamber for enregistering Presidential edicts? It is said, that the document on this subject was one which the Executive had no right to lay before the House. When did the right of the President to recommend modifications of the Judiciary system cease? Such recommendations had heretofore formed a prominent feature in two successive Executive communications made at the commencement of two successive sessions of Congress. Did the right of the Executive to recommend, and of Congress to act, cease at the precise period when the faultless model of the last session was perfected? Mr. R. said, that the gentleman from Delaware had taken such a range, and thrown out such a vast deal of matter, that, in attempting to reply to some of his observations, he was necessarily led into many desultory remarks. The present system, it seems, was necessary, from the inevitable corporeal infirmity of the judges: the unavoidable effect of the tedious probation indispensable to that venerable station.

Let us compare the former practice with the present theory. The judge of one of the two districts into which Virginia had been divided,

was contemporary with him at school. He is certainly neither an infirm nor hoary sage. His associate from Maryland had been an active and gallant partisan at the siege of Pensacola, during our Revolutionary war: not contending, however, under those banners where you would have expected to find a man who occupied so dignified a station under the Government of the United States; but fighting the battles of his King. Bravely, yet, alas! unsuccessfully contending against the spirit of insubordination and jacobinism which threatens to sweep from the earth everything valuable to man, against which the gentleman from Delaware is also eager to enter the lists. The selections which have been made from either House of Congress seem to have had as little reference to age and experience, which are said to be indispensable to the Judicial character. Upon a subject connected with those appointments, we have been told that the Executive had a right to presume a vacancy in all cases where a judge of an inferior tribunal had been appointed to a seat on the bench of a superior court; and that the new office vests, not at the time when the judge is notified of his promotion, nor at the date of his acceptance, but from the date of his commission. Mr. R. said, that he certainly did not mean to contend with the gentleman from Delaware on points of law, yet he would put a question to that gentleman. It will readily be conceded, that the vacating of the former office is the condition of the acceptance of the latter. Suppose a judge, after the date of his new commission, but prior to his notification or acceptance thereof, perform a Judicial act, was that act, therefore, invalid? Could his successor, on the receipt of his commission, exercise the functions of judge, prior to the resignation of the former incumbent? Could any office be at the same time in the possession of two persons? Did not this doctrine imply a right on part of the Government to anticipate the resignation of any judge, to compel his assent to an act vacating his office? The new commission, under these circumstances, either did or did not give a claim to its possessor on the office. If it did not, the Executive had a right to withhold it. If it did, a judge may be expelled from office, without his consent, and provided at any time afterwards he shall acquiesce, the expulsion is legal. Besides, by what authority does a member of this House hold his seat under an election previous to his appointment of district judge of North Carolina? For this office a commission was issued, as I am credibly informed. But, sir, we shall be told, that the manner in which this affair was transacted ought not to affect our decision. It is with me an irrefragable proof of the inexpediency of the law, and of course conclusive evidence of the expediency of its repeal.

But the Constitution is said to forbid it. And here permit me to express my satisfaction, that gentlemen have agreed to construe the Constitution by the rules of common sense. This mode is better adapted to the capacity of unprofessional men, and will preclude the gentleman from arrogating to himself, and half a dozen other characters in this Committee, the sole right of expound-

ing that instrument, as he had done in the case of the law which is proposed to be repealed. Indeed, as one of those who would be unwilling to devolve upon that gentleman the high-priesthood of the Constitution, and patiently submit to technical expositions which I might not even comprehend, I am peculiarly pleased that we are invited to exercise our understandings in the construction of this instrument. A precedent, said to be quite analogous, has been adduced—the decision of the judges of Virginia, on a similar question. A pamphlet, entitled “A Friend to the Constitution,” has been quoted. Public opinion informs me that this is the production of the pen of a gentleman who holds a pre-eminent station on the Federal bench. Am I so to consider it? If this be understood, it is entitled to high respect; the *facts*, at least, must be unquestionable.

The courts of Virginia consisted of one general court of common law; a court of chancery, composed of three judges; and a court of admiralty. The judges of all those courts held their offices during good behaviour; and did, by law, constitute a court of appeals. The general court becoming manifestly incompetent to the extensive duties assigned to it, a system of circuit courts was adopted in 1787, and the judges of the court of appeals were appointed to ride the circuits. This law the judges pronounced unconstitutional, and agreed, unanimously, to remonstrate against it. After lamenting the necessity of deciding between the Constitution and the law, and that, in a case personally interesting to themselves, they say, “on ‘this view of the subject, the following alternatives presented themselves; either to decide the ‘question, or resign their offices. The latter ‘would have been their choice, if they could have ‘considered those questions as affecting their individual interests only.” Yes, sir, and such was the character of those men, that none doubted the sincerity of this declaration. They then go on to declare, that the Legislature have no right even to increase their duties, by a modification of the courts; a privilege for which no one here has contended. In respect, much more, it is believed, to the characters of those venerable men, than to this opinion, the Legislature did not enforce the new regulations. The law was new-modelled, a separate court of appeals established, the judges of which were to be elected by joint ballot, in conformity with the Constitution. New members were added to the general court, and it was declared to be their duty to ride the circuits. The judges of chancery, of the general court, and court of admiralty, who had not been elected, in pursuance of the Constitution, judges of appeals, but on whom that duty was imposed by law, were relieved from the further discharge of it. In this arrangement several of the judges were understood to have been consulted; and on the ballot, the six senior judges were elected, five into the court of appeals, and the sixth in the court of chancery. Nevertheless, against this law the judges also protested, as an invasion of the Judiciary establishment, denying the right of the Legislature to deprive them of office in any other

mode than is pointed out in the Constitution, (impeachment;) but to make way for the present salutary system, they do, in their mere free will, resign their appointments as judges of the court of appeals, and, as they do not hold any separate commission for that office, which might be returned, they do order the same to be recorded.

Now, sir, I shall not contend, as I certainly might, and with great reason, that the practice of Virginia must be considered as settling the Constitutional doctrine of the State, the opinions of individuals, however enlightened and respectable, notwithstanding; under which practice two chancellors have been removed from their office of judges in chancery, as well as of appeals, and the judges of the general court and court of admiralty also divested of their seats on the bench of the court of appeals, although a court of appeals was supposed necessary, and was retained in the new system; nor shall I insist on the disparity between the stability of the judicial branch of Government in the eye of the constitution of Virginia, and that of the United States, respectively, as surely I might. For the constitution of Virginia has a retrospect to pre-existing Judicial establishments, which experience had tested, which were allowed to be beneficial, and which it is contended were sanctioned by it. That of the United States, formed when the Confederacy had no such establishments, is to be created, from time to time: in other words, to be modified, as experience shall point out their defects—this power being devolved on a body constituted by express *unalterable* provisions. No, sir, I shall not dilate upon these forcible topics; I will concede, for argument-sake, that the doctrine contended for by the judges of Virginia, was the true Constitutional doctrine, and will apply it to the bill on your table, having first applied it to the act on which it is intended to operate. Previous to the existence of that act, the duty of judge of the circuit court was performed by the judges of the Supreme Court, who constituted a court of appeals, and by the judges of the respective districts. These were judges of the circuit court to every intent and purpose, as completely as the judges of Virginia were judges of appeals. By the operation of the law of the last session, they have been divested of this *office*, and other persons have been appointed to it. Much stress is laid, much ingenuity exercised to make metaphysical distinctions between the court and the office. I will grant all that gentlemen contend for, that there is a wide distinction. Does it affect the case? Does it alter the fact? The late circuit courts were not only abolished—the persons holding the office of judge of those courts no longer hold it; they have neither been impeached, nor have they resigned. They have not even accepted any new appointment inconsistent with it, and by which it became vacant. The function of judge of the circuit court does or does not constitute an office. If it does, then the judges of the supreme and district courts have been deprived of their offices, (the discharge of whose duties, be it remembered, constitutes no small part of the consideration for which they receive their

FEBRUARY, 1802.

Judiciary System.

H. OF R.

salaries.) If it does not, then the circuit judges are not now about to be deprived of their offices. On the passage of the law of last session, did we hear any protest against its unconstitutionality from the supreme or district courts? Of any resignations of the office of judge of the circuit court, in order "that a salutary system might take effect?" And yet, sir, is not that office as distinct from that of supreme or district judge, as the office of judge of appeals in Virginia is from that of judge of the general court, chancery, or admiralty? Are not the jurisdictions of those courts separate and distinct? Both never having original jurisdiction of the same subjects; and an appeal lying from the inferior to the superior tribunal, as in Virginia, although the officers of those tribunals may be the same individuals? What, then, is the difference between taking the office of appellate jurisdiction from the judge who possessed original jurisdiction, or taking the office of original jurisdiction from the appellate judge? How is the independence of the judge more affected by the one act than by the other?

To prove the unconstitutionality of this bill, then, by a recurrence to the doctrine of the judiciary of Virginia, is to prove the unconstitutionality of the law of which it will effect the repeal. And no argument has been, or, in my poor opinion, can be, adduced, to prove the unconstitutionality of the one, which will not equally apply to the other. No, sir, gentlemen are precluded by their own act from assuming the ground of the judges of Virginia; they are obliged to concede that we have the power, because they have already exercised it, of modifying the courts, and here they concede the question. They tell you that this, however, must, to be Constitutional, be a "bona fide" modification. It becomes them to prove, then, that this is a *mala fide* modification.

Gentlemen have not, they cannot meet the distinction between removing the judges from office for the purpose of putting in another person, and abolishing an office, because it is useless or oppressive. Suppose the collectors of your taxes held their offices by the tenure of good behaviour, would the abolition of your taxes have been an infraction of that tenure? Or would you be bound to retain them, lest it should infringe a private right? If the repeal of the taxes would be an infringement of that tenure, and therefore unconstitutional, could you ring all the changes upon the several duties on stamps, carriages, stills, &c., and, because you had retained the man and any one of these offices without diminishing his emoluments, abolish the others? Would not this be to impair the tenure of the office which was abolished, or to which another officer might have been appointed by a new regulation? Have not the judges, in the same manner, been deprived of one of their offices? And is not the tenure as completely impaired thereby, as if the other had been taken away also? Although it will be granted that the *tenant* is not so much affected, since, with one office, he has the salary formerly attached to both.

I agree that the Constitution is a limited grant

of power, and that none of its general phrases are to be construed into an extension of that grant. I am free to declare, that if the intent of this bill is to get rid of the judges, it is a perversion of your power to a base purpose; it is an unconstitutional act. If, on the contrary, it aims not at the displacing one set of men, from whom you differ in political opinion, with a view to introduce others, but at the general good by abolishing useless offices, it is a Constitutional act. The *quo animo* determines the nature of this act, as it determines the innocence or guilt of other acts. But we are told that this is to declare the Judiciary, which the Constitution has attempted to fortify against the other branches of Government, dependent on the will of the Legislature, whose discretion alone is to limit their encroachments. Whilst I contend that the Legislature possess this discretion, I am sensible of the delicacy with which it is to be used. It is like the power of impeachment, or of declaring war, to be exercised under a high responsibility. But the power is denied since its exercise will enable flagitious men to overturn the Judiciary, in order to put their creatures into office, and to wreak their vengeance on those who have become obnoxious by their merit. Yet the gentleman expressly says, that arguments drawn from a supposition of extreme political depravity, prove nothing; that every Government pre-supposes a certain degree of honesty in its rulers, and that to argue from extreme cases is totally inadmissible. Yet the whole of his argument is founded on the supposition of a total want of principle in the Legislature and Executive. In other words, arguments drawn from the hypothesis are irresistible when urged in favor of that gentleman's opinion; when they militate against him, they are totally inapplicable. It is said that the bill on your table cannot constitutionally be passed, because unprincipled men will pervert the power to the basest of purposes; that, hereafter, we may expect a revolution on the bench of justice, on every change of party, and the politics of the litigants, not the merits of the case, are to govern its decisions. The Judiciary is declared to be the guardian of the Constitution against infraction, and the protection of the citizen, as well against Legislative as Executive oppression. Hence the necessity of an equal independence of both. For it is declared to be an absurdity, that we should possess the power of controlling a department of Government which has the right of checking us; since thereby that check may be either impaired or annihilated. This is a new doctrine of check and balance, according to which the Constitution has unwisely given to an infant Legislature the power of impeaching their guardians, the judges. Apply this theory to the reciprocal control of the two branches of the Legislature over each other and the Executive, and of the Executive over them. But sir, this law cannot be passed, because the character of the bench is to be given to it by the Legislature, to the entire prostration of its independence and impartiality. It will be conceded, that measures, such as have been portrayed, will

never be taken, unless the sentiment of the ruling party is ready to support them. Although gentlemen contend, that the office of judge cannot be abolished, they are not hardy enough to deny that it may be created. Where then, sir, is the check, supposing such a state of things as the gentleman has imagined, (and which he has also declared cannot be conceived,) which shall prevent unprincipled men from effecting the same object by increasing the number of judges, so as to overrule, by their creatures, the decisions of the courts? Would not public opinion be as ready to sanction the one as the other of these detestable acts? Would not the same evil which has excited such apprehension in the minds of gentlemen, be thus effected by means even more injurious than those which they have specified? Without any breach of the Constitution an unprincipled faction may effect the end which is so much apprehended from the measure now contemplated to be adopted. I might add, that, when the public sentiment becomes thus corrupt, the ties of any Constitution will be found too feeble to control the vengeful ambition of a triumphant faction. The rejection of this bill does not secure the point which has furnished matter for so much declamation. Its friends are represented as grasping at power not devolved upon them by the Constitution, which hereafter is to be made the instrument of destroying every judicial office, for the purpose of reviving them and filling the places with their partisans.

I have long been in the habit of attending to the arguments of the gentleman from Delaware, and I have generally found, in their converse, a ready touch-stone, the test of which they are rarely calculated to withstand. If you are precluded from passing this law, lest depraved men make it a precedent to destroy the independence of your Judiciary, do you not concede that a desperate faction, finding themselves about to be dismissed from the confidence of their country, may pervert the power of erecting courts, to provide to an extent for their adherents and themselves? and that however flagrant that abuse of power, it is remediless, and must be submitted to? Will not the history of all Governments warrant the assertion, that the creation of new and unnecessary offices, as a provision for political partisans, is an evil more to be dreaded than the abolition of useless ones? Is not an abuse of power more to be dreaded from those who have lost the public confidence than from those whose interest it will be to cultivate and retain it? And does not the doctrine of our opponents prove that, at every change of administration, the number of your judges are probably to be doubled? Does it not involve the absurdity that, in spite of all Constitutional prohibitions, Congress may exercise the power of creating an indefinite number of placemen, who are to be maintained through life at the expense of the community? But, when these cases are cited, you are gravely told that they suppose a degree of political depravity which puts an end to all argument. Here, sir, permit me to state an important difference of opinion between the two sides of this House. We are accused of an am-

bitious usurpation of power; of a design to destroy a great department of Government, because it thwarts our views, and of a lawless thirst of self-aggrandizement which no consideration can restrain. Let us not be amused by words. Let us attend to facts. They will show who are contending for unlimited, and who for limited power. The opponents of this bill contend that they did possess the power of creating offices to an indefinite amount; which, when created, were beyond the control of the succeeding Legislature. They, of course, contend for the existence of such a power in the present Legislature, for whose exercise there is no security but their self-respect. In other words, that if the present majority should incur the suspicion of the people, they may, as soon as there is any indication of their having forfeited the public confidence, on the signal of their dismissal from their present station, make ample and irrepealable provision for themselves and their adherents, by the creation of an adequate number of judicial offices. Now, sir, this is a power which we reject, though it is insisted that we possess it. We deny that such an authority does exist in us. We assert that we are not clothed with the tremendous power of erecting, in defiance of the whole spirit and express letter of the Constitution, a vast judicial aristocracy over the heads of our fellow-citizens, on whose labor it is to prey. Who, then, are, in reality, the advocates of a limited authority, and who are the champions of a dangerous and uncontrollable power? In my estimation, the wisest prayer that ever was composed is that which deprecates the being led into temptation. I have no wish to be exposed myself, nor to see my friends exposed, to the dangerous allurements which the adverse doctrine holds out. Do gentlemen themselves think that the persons, whom I see around me, ought to be trusted with such powers? Figure to yourselves a set of men, whose incapacity or want of principle have brought on them the odium of their country, receiving, in the month of December, the solemn warning, that on the fourth of March following, they are to be dismissed from the helm of government; establish the doctrine now contended for, and what may we not expect? Yes, sir, the doctrine advanced by our opponents is that of usurpation and ambition. It denies the existence of one power by establishing another infinitely more dangerous; and this you are told is to protect, through the organ of an independent judiciary, the vanquished party from the persecution of their antagonists, although it has been shown that, by increasing the number of judges, any tone whatever may be given to the bench.

The theory for which gentlemen contend seems to me far-fetched and overstrained. A mighty enginery is set in motion, which to all good purposes is ineffectual, although formidable in the perpetration of mischief. If, however, the people should be of a different opinion, I trust that at the next election they will apply the Constitutional corrective. That is the true check; every other check is at variance with the principle, that a free people are capable of self-government.

FEBRUARY, 1802.

Judiciary System.

H. OF R.

But, sir, if you pass the law, the judges are to put their veto upon it by declaring it unconstitutional. Here is a new power, of a dangerous and uncontrollable nature, contended for. The decision of a Constitutional question must rest somewhere. Shall it be confided to men immediately responsible to the people, or to those who are irresponsible? for the responsibility by impeachment is little less than a name. From whom is a corrupt decision most to be feared? To me it appears that the power which has the right of passing, without appeal, on the validity of your laws, is your sovereign. But an extreme case is put; a bill of attainder is passed; are the judges to support the Constitution or the law? Shall they obey God or Mammon? Yet you cannot argue from such cases. But, sir, are we not as deeply interested in the true exposition of the Constitution as the judges can be? With all the deference to their talents, is not Congress as capable of forming a correct opinion as they are? Are not its members acting under a responsibility to public opinion, which can and will check their aberrations from duty? Let a case, not an imaginary one, be stated: Congress violate the Constitution by fettering the press; the judicial corrective is applied to; far from protecting the liberty of the citizen, or the letter of the Constitution, you find them outdoing the Legislature in zeal; pressing the common law of England to their service where the sedition law did not apply. Suppose your reliance had been altogether on this broken staff, and not on the elective principle? Your press might have been enchained till doomsday, your citizens incarcerated for life, and where is your remedy? But if the construction of the Constitution is left with us, there are no longer limits to our power, and this would be true if an appeal did not lie through the elections, from us to the nation, to whom alone, and not a few privileged individuals, it belongs to decide, in the last resort, on the Constitution. Gentlemen tell us that our doctrine will carry the people to the gallows if they suffer themselves to be misled into the belief that the judges are not the expositors of the Constitution. Their practice has carried the people to infamous punishment, to fine and imprisonment; and had they affixed the penalty of death to their unconstitutional laws, judges would not have been wanting to conduct them to the gibbet.

A case in the Supreme Court has been mentioned. I certainly do not mean to put my opinion in competition with that of the gentleman from Delaware on a professional subject; but I cannot agree with him that the granting of the rule was not an assumption of the jurisdiction. Suppose a motion made in a court of Virginia for a rule to be served on the Governor of Massachusetts, to show cause why a mandamus should not issue, commanding him to do a specific act; to my unlettered judgment the acceptance of the motion would be to presume, that if the Governor could not show cause, the mandamus might issue. Would not nay court reject such a motion, on the consideration that the Chief Magistrate

of another State was not amenable to their jurisdiction? The gentleman from Delaware, doubtless, recollects, and, probably, better than I do, for I believe he was a spectator of the trial, the refusal of a subpoena to a man under a criminal prosecution, (I allude to the case of Cooper, in Philadelphia,) to be served on the President, as a witness on the part of the prisoner. Was that a subject of inferior magnitude to a mere question of municipal regulation? This court, which it seems has lately become the guardian of the feeble and oppressed, against the strong arm of power, found itself destitute of all power to issue the writ. Was it because of the influence and interest of that persecuted man, or of his connexions, that it was unnecessary at that time to exert that protecting power? No, sir, you may invade the press; the courts will support you, will outstrip you in zeal to further this great object; your citizens may be imprisoned and amerced, the courts will take care to see it executed; the helpless foreigner may, contrary to the express letter of your Constitution, be deprived of compulsory process for obtaining witnesses in his defence; the courts, in their extreme humility, cannot find authority for granting it; but touch one cent of their salaries, abolish one sinecure office which the judges hold, and they are immediately arrayed against the laws, as the champions of the Constitution. Lay your hands on the liberties of the people, they are torpid, utterly insensible; but affect their peculiar interest, and they are all nerve. They are said to be harmless, unaspiring men. Their humble pretensions extend only to a complete exemption from Legislative control; to the exercise of an inquisitorial authority over the Cabinet of the Executive, and the veto of the Roman Tribune upon all your laws; together with the establishing any body of laws which they may choose to declare a part of the Constitution. Grant this authority, sir, to your judges, and you will have a Constitution which gentlemen who are such enemies to dumb legislation may indeed approve, because it is the very reverse of that which has been the object of their animadversions. To you will indeed belong the right of discussing—there ends your power; the judges are to decide, and without appeal. In their inquisitorial capacity, the Supreme Court, relieved from the tedious labor of investigating judicial points by the law of the last session, may easily direct the Executive by mandamus, in what mode it is their pleasure that he should execute his functions. They will also have more leisure to attend to the Legislature; and forestall, by inflammatory pamphlets, their decisions on all important questions; whilst, for the amusement of the public, we shall retain the right of debating but not of voting.

A new mode of appeal—that of the sword—has been lately produced. It is worthy of remark, that the era of this appeal commenced with the downfall of the power of the last Administration. The political opponents of that gentleman have set him an example of which, I hope, he and his friends will profit. They knew that the Constitution had been violated. It was no

business of speculation, but a plain matter of fact. What was their conduct? They preferred submission to civil dissension. They addressed themselves to the good sense of the community, and their judgment has been affirmed by the people, through the medium of the elections. But, sir, another objection is held up as fatal to the bill on your table: that it diminishes the salaries of the district judges of Kentucky and Tennessee, by repealing the law which increased them. Let us examine this fact. By this very law the courts of those districts were expressly abolished; the office of judge of those courts was destroyed. The men, it is true, were retained, and a judicial office given them; but an office entirely different from the former, with distinct functions and jurisdiction, and with different salary. We propose to restore those judges to their old offices by abolishing the new ones, to which they never were Constitutionally appointed. If their appointment was, however, Constitutional, I leave it to the Committee to decide, whether the district judge of Kentucky might not, on the theory of our adversaries, demand both salaries, since you had no right to take away his old office and salary? I have not the pleasure of a personal acquaintance with the gentleman who fills that office; but his reputation is too high to lead me to suppose such a claim possible. I mean no disrespect to him, far from it, in putting this case. Instead, as has been asserted, of rendering the office of judge a sinecure, as a pretext for abolishing it, we propose to restore the establishment to its primitive purity; to give the judges, both of the district and supreme courts, duties to perform—the latter being, it seems, now destitute of any other employment than keeping the consciences of the inferior courts. We mean to restore the district judges to their office of circuit judge, for exercising whose duties they have been amply paid by the public; to restore the judges of the Supreme Court to the same office of which they have been deprived, not believing a sinecure court of appeals to be desirable. Whence then the clamor that the judicial authority is to be perverted to the vile purpose of wreaking party vengeance? Suppose a case to occur, are not the persons who are to decide of the same political character with the minority? Would that gentleman have any cause to fear the decision of a controversy with a person of a different political complexion, because of that difference? Is not the Judiciary left precisely in the state in which it was a twelvemonth ago? Are not the same principles to govern, and the same individuals to decide?

It is not, however, on account of the paltry expense of the new establishment that I wish to put it down. No, sir, it is to give the death-blow to the pretension of rendering the Judiciary an hospital for decayed politicians; to prevent the State courts from being engulfed by those of the Union; to destroy the monstrous ambition of arrogating to this House the right of evading all the prohibitions of the Constitution, and holding the nation at bay.

If gentlemen dread the act which we are about to pass, they will remember that they have been the means of compelling us to it. They ought to have had the forbearance to abstain from such a measure at such a crisis. They have forced upon us the execution of a painful duty by their own want of prudence. If they wished the judges, like the tribe of Levi, to have been set apart from other men for the sacred purposes of justice, they should have considered well before they gave to publicans and sinners the privilege of the high priesthood. It is said that there is irrefragable proof in the smallness of the salaries annexed to them, that those offices were not established under any improper bias. If such bias had existed, \$10,000, or a larger sum, might have been given. To execute a proposition of this sort, I believe nerve would have been found wanting. On that, as on another occasion which has been mentioned, we should have had blank votes. This is, however, triumphantly brought forward as an instance of the want of power in one Legislature over the acts of another. The President's salary might have been increased, or that of the judges, to a million or more of dollars; where would be your remedy? I will tell gentlemen: in a refusal of appropriation. Who would hesitate in such a case? The salary might exceed the annual revenue. This, too, is another instance, I suppose, of the inadmissibility of extreme cases. I should not hesitate, sir, to refuse an appropriation in such a case, and throw myself on the good sense of my country.

The example of a mighty nation has been held up as a solemn warning against an act which is said to prostrate the barriers of the Constitution; to that example be the decision of this question referred. A Government entrenched beyond the reach of public opinion, had for ages been accumulating one abuse upon another; against an authority which time served but to render more intolerable, the nation was compelled to seek refuge in a recurrence to revolutionary principles. And are we, therefore, to sanction a construction of the Constitution which claims irresponsibility for public agents? Which allows no remedy for grievances but revolution, and that perhaps when a recurrence to such a measure shall be too late? Who, after such an example, ought to contend for a perversion to individual aggrandizement of that power which was delegated for the public good?

I have endeavored, Mr. Chairman, in my poor desultory way, to repeat some of the arguments which have been offered by the gentleman from Delaware. Upon some topics it has been extremely painful to me to dilate; they could not have been avoided; they were obtruded upon me. There is one, however, on which it may be expected I should say something. I believe it unnecessary; the poison carries with it its own antidote. Who could have expected such remarks from that gentleman? If, however, he is now anxious to protect the independence of this and the other House of Congress against Executive influence, regardless of his motives, I pledge myself to support any measure which he may bring forward for that purpose;

FEBRUARY, 1802.

Judiciary System.

H. OF R.

and I believe I may venture to pledge every one of my friends.

The Committee now rose, and the House adjourned till Tuesday next.

TUESDAY, February 23.
JUDICIARY BILL.

The House again resolved itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. HUGER.—I have endeavored to catch your eye, Mr. Chairman, at this time, under the expectation and in the hope, that as the Committee have, during the two last days, enjoyed a vacation from public business, I shall run the less risk of exhausting its patience, and may calculate the more largely on the good nature and indulgence of gentlemen, in the course of the few observations I shall venture to submit to their consideration. Little accustomed to deliver my sentiments before a public audience, from my mode and habits of life seldom obliged even to concentrate my ideas on a particular subject, I have at no time presumed to address this honorable body but with great diffidence, with the utmost deference. Never, I can truly say, have I felt more strongly and sincerely these sensations than at the present moment—nor have I without great difficulty, and after much hesitation, ventured to offer myself to your regards, and take possession of the floor. Believing however, as I do, that the dearest interests of the community, the very existence of our national Government and Union, are involved in this momentous question, I feel myself compelled, in duty and in conscience, to express my dissent, and enter my protest against the (in my humble opinion, unconstitutional and mischievous) measure, which we are now called upon to adopt, in language more strong and decided than might be conveyed by a silent vote.

When I was before up, Mr. Chairman, on the motion for the postponement, made by the member from Delaware, I took occasion to express my regrets, that a Constitutional point of the first magnitude and importance should be brought forward at a moment so inauspicious to a fair and impartial investigation of it; at a time when the passions of gentlemen had been so greatly excited; when party feelings and party zeal must necessarily have so powerful an influence on their minds; when they had just gained, after a long and irritating struggle, a complete victory over their political opponents, and found themselves at a moment's warning, put in possession of the whole power of the Government. I could not but lament and deplore the fallibility of human nature, and what appeared to me to be the infatuation of men, whom I knew to be wise and honorable. I deprecated and protested against the haste and precipitancy, with which this measure was so unnecessarily hurried on for consideration, and conjured gentlemen to pause and consider whether it was at this moment, and under the present circumstances, that they

ought to give a loose to their feelings, and urge the House to decide irrevocably and finally a great and all important national and Constitutional question; involving in its decision the prostration and complete overthrow of the only bar, the only efficient check, which the Constitution had provided, to their newly acquired power; implicated, as it unfortunately was, with another subject, peculiarly obnoxious to them, as a party, and necessarily exciting in their minds so many unpleasant and irritating recollections. Now, sir, let me ask, I submit it to the candor of the Committee to determine, whether the course which has been pursued, and the occurrences which have since taken place, do not fully warrant and clearly evince the correctness and propriety of the observations I made on that occasion? Which of the honorable gentlemen, who have advocated the measure now submitted to your consideration—which of them I pray you, has been able to divest himself of his party feelings and enthusiasm, and laying aside all extraneous matter, has confined himself to the real merits of the question? An honorable member from Virginia (Mr. GILES,) not now in his place, who has, however, taken an active part in the debate, and who, without disparagement to other gentlemen may be regarded as the *premier*, or *prime minister* of the day, promised us on a former occasion that he would endeavor to take this course. He told us, that if party sensations ever could be buried, the subject of the bill before us was the most proper to induce both sides of the House to make an effort to that effect—that he hoped and sincerely wished all extraneous and foreign matter might be laid aside, and that gentlemen would meet the question with coolness and temper, and make up their opinions on the subject with a view merely to the simple merits of the case. And if I am not greatly mistaken, the honorable member pledged himself, that he would endeavor to enforce this doctrine by his own example. But what was the fact? Had that gentleman confined himself in the same degree to the real merits of the case? Had he not on the contrary put his memory and invention equally to the rack, in order to ferret out proper subjects for irritation, and to excite to the highest pitch the party feelings and the party spirit of the Committee? Had he not gone back to the very commencement of the Government, giving an *ex parte* history of all its operations for twelve long years, and brought to our recollection every topic, every subject, which during this period had been conjured up and made use of to prejudice and inflame the public mind against those who have heretofore administered the Government? He had not been satisfied to avail himself even of living objects, but had raked up the ashes of the dead, not certainly to prove the expediency or constitutionality of the measure proposed, but for the charitable purpose of throwing an odium on his political opponents. So far was he indeed from confining himself, as he had promised, to the point in dispute, that his sole aim, his only object, would seem to have been to show that the act of the last session was passed with party views, and party purposes, and upon the same grounds ought now to be done away.

When a gentleman of such high talents and extensive acquirements, addresses himself so much to the passions and party feelings, and so little to the reason and understanding of his audience, does it not, sir, afford a strong presumption that he is neither convinced of the soundness of the doctrine he advances, nor satisfied with the strength of the arguments he has to adduce in support of the measure he wishes to carry?

I observe, Mr. Chairman, on running my eye over the notes which I have taken in the course of the present debate, one circumstance which has been noticed by several gentlemen, and upon which they dwell with apparent triumph. They tell us that the members of the present Congress were elected with a view to the repeal of the act of the last session; that the people have thereby shown their disapprobation of the new organization of the Judiciary then adopted, and have expressed in a manner not to be misunderstood their sentiments in favor of the Constitutional doctrine now contended for. Gentlemen should really, however, consult facts and dates, before they indulge themselves in these round assertions. Is it not, sir, in the present instance, notorious to every body that the great majority, three-fourths at least, of the members of the present Congress, were chosen antecedent to the passage of the law in question? The elections, it is well known, had taken place in South Carolina, North Carolina, Pennsylvania, New Jersey, New York, and, I believe, all the New England States, before it was adopted. How, then, can gentlemen pretend to tell us at this day that the majority of the House were elected with a view to the repeal of a law which was not in existence at the time of their elections, and that the people had in this way expressed their opinions and sentiments on a Constitutional question, which could not, in the nature of things, have been before them?

I shall now, sir, and before I proceed to the discussion of the main question, beg leave to say a few words with respect to the document No. 8, which was presented to this House by the Executive, for the purpose of throwing additional light on the subject of the Judiciary, and which has been printed and dispersed throughout the continent with so much diligence and liberality. But allow me, sir, in the first place, to call the attention of the Committee to the President's Message at the commencement of the session, and remind them of what he there says on the subject. Speaking of the Judiciary, he expresses himself in the following words:

"The Judiciary system of the United States, and especially that portion of it recently erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several States, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those which were depending, when additional courts and judges were brought to their aid."

I know not, sir, whether this part of the Message made the same impressions on the mind of every gentleman who heard it read; but to me and all those to whom I have spoken on the subject, it certainly did appear to hold out the idea that the Executive had caused to be procured from the several States, and then laid before Congress, an exact statement of all the causes decided since the first establishment of Federal courts, and which were still depending before them. For myself, I did understand and expect that we were to have a complete and general view of the Judiciary in all its branches and ramifications. I observe, moreover, that all those gentlemen who either in this or the other branch of the Legislature, have referred to document No. 8, acted under this impression, and spoke of it as affording a general view of all the business which had been brought before the various and different courts of the United States. And such, in my humble opinion, ought in fact to have been the statement. We ought to have had a full and not a partial view of the subject, if it was necessary that we should have any official information at all with respect to it. Instead, however, of a general and comprehensive view of all the business before the Federal courts, we have only a partial and incorrect statement of the business which has been brought before a proportion (not all even of these) of the circuit courts under the old establishment: the very courts whose organization we contend was defective, and which the honorable and learned member from Delaware has proven beyond all possibility of doubt to have been found so very inconvenient in practice that suitors were driven from them, and forced, however against their inclination, to have recourse to other tribunals. If the document, therefore, incorrect as it avowedly is, proves anything, it goes to establish what we aver and contend for, to wit, that these courts were heretofore improperly organized, and did not afford that prompt and equal justice which the people of the United States have a right to expect, and ought to find in the national tribunals. And although I have not had an opportunity of procuring any information on the subject from my own immediate State, nor can be expected, being no professional man, to have acquired any practical knowledge of the business of the courts in the various parts of the Union, yet I have casually received some information from a neighboring State, which will at once show under how different an aspect the subject would present itself; how much more considerable the quantity of business brought before the Federal Courts would appear to have been had there been presented to our view a general statement of all the causes which have been or are now depending in all the different courts. It has been stated to me, on authority upon which I have every reason to rely, that the President had applied for cases in the city courts only, not in district courts; that there have been and are still, however, depending in the district courts of Virginia alone, suits to the number of twelve hundred, more than half of which are yet undetermined, and that there is no

FEBRUARY, 1802.

Judiciary System.

H. OF R.

doubt but that other States have their suits in the same proportion.

The Committee will at once perceive in how very different a light this subject would have appeared to the eyes of the American world, both as to the quantity and importance of the business, under the cognizance of the Federal Judiciary, had a general statement, as was expected, of all the causes which have been brought before any and each of the courts, been submitted to us by the Executive.

Whilst on this subject, I beg permission, sir, to state another piece of information which I have received with respect to the courts of Virginia. It is stated in the document No. 8, respecting the circuit court which sits at Lexington, for the western district of Virginia, "that no causes were decided or depending in the circuit court of the western district of Virginia." But no reason is given; and the inference necessarily drawn from this by the public must no doubt be, that there was no business to be done in that court. I am credibly informed, however, that there was neither a marshal nor an attorney for that court when the judges met, nor was there any jury summoned. The commission, it seems, of marshal, for Mr. Grattan, and of attorney for General Blackburn, which had been made out, sealed, and ordered to be put into the post office, under the old Administration, (without being actually put in the mail,) were suppressed upon a change taking place in the Administration; and it was not until after the date of the docket, that Mr. Moore and Mr. Monroe received their commissions as marshal and attorney of that district. I am further told, that, as soon as the federal court met, thus organized, fifteen suits were instituted. Now, sir, were not these facts known to those who framed the document No. 8? And, if known, ought there not, in fairness and candor, to have been some notice taken of them in the exact statement, instead of admitting the insinuation which it conveys, as it now stands, viz: that there was no business at all to be transacted in the circuit court for the western district of Virginia?

[Here Mr. HUGER was interrupted by Mr. HOLLAND, from North Carolina, who wished to know the authority upon which he made these statements. Mr. H. said, in reply, that he did not conceive himself bound to give his authority; nor did he think proper to gratify the honorable gentleman's curiosity, in this respect, unless called upon to do so by the House. It was sufficient that he believed the information he had received to be correct: he stated what he conceived to be facts in his place. If he was incorrect, or misinformed, it became gentlemen on the other side to deny the facts, and point out to the Committee in what respect the information he had given was erroneous.]

Mr. H. then continued. I shall not, sir, encroach further on the time and indulgence of the Committee by any other desultory observations, but shall proceed to consider, as well as my feeble means will permit, the merits of the main question, and the bill now under consideration.

The bill sent down from the Senate, and now

before the Committee, involves two very distinct questions. It is proposed, in the first place, to repeal the act for the better organization of the Judiciary, passed at the last session, and thereby to revive the former Judicial establishment. Was this the only consequence—the whole effect of the bill—I should feel little anxiety as to the result of the present debate. For, defective as the old system is conceived to have been, I have no doubt but that we might have hobbled on with it a few years longer, until further experience should have induced some future Congress to alter and amend it. Certain additional judges, however, having been required and appointed under the act of the last session, a simple and unqualified repeal of that act necessarily deranges and deprives them of their offices. Hence arises another question of far greater magnitude—in my estimation all-important, viz: Whether this can be constitutionally done? In other words, whether the judges of the federal courts are to hold their offices during good behaviour, as the Constitution would seem to require, or at the pleasure of the other two branches of the Legislature—the construction now contended for?

Having been one of those who, in a former Congress, contributed to bring about those alterations in the federal courts, which it is at this time proposed to do away, I may well be supposed to feel a partiality for, and to be prejudiced in favor of, them. To this partial feeling—to these prejudices—it is perhaps owing, Mr. Chairman, that, notwithstanding all that torrent of abuse which has been so liberally, but with so little foundation, bestowed on the law of the last session; notwithstanding the labored and learned arguments which I have heard and read on the subject, both within and without these doors, I am still so much of a heretic as to believe that the former organization of the Federal Judiciary was defective, and that it has been improved upon and amended by the new system. I am still so unreasonable as to suppose (judging from my own feelings and impressions) that the framers of the law it is now proposed to repeal might have been actuated by motives less criminal and impure than those which have been so charitably attributed to them by their political opponents, and that some grounds might be adduced in favor of the provisions introduced into it not altogether untenable. It has, however, been echoed and re-echoed, from one end of the continent to the other, that the present was a hasty and novel system—totally unnecessary—suddenly brought forward with party views—adopted for party purposes, and hurried through the last Congress by small majorities, in either branch of the Legislature. I will not undertake to say, sir, that those who passed the law, now so much deprecated, were totally exempt from party feelings; nor will I deny that it was adopted at a late stage of the last session, and carried by no very large majority, either in the Senate or the House of Representatives. I do contend, however, that the measure cannot, in fairness and candor, be attributed to mere party motives, distinct from all public advantage; that the defects of the old system have been for years back complained of; that

Congress have been again and again called on to remedy them, and that the most important change—the vital principle contained in the new system—has been in contemplation from the very commencement of the present Government, and has been heretofore warmly advocated by gentlemen of the very political sect which now raise such a clamor against it. Let us test these assertions by facts and dates.

One of the most pressing and not least important duties of the first Congress, under the present Constitution, was to organize and establish national tribunals for administering justice, and carrying the laws of the Union into effect. They took the business up, therefore, at a very early period, and adopted a plan, of which I request to give the outlines.

The United States were divided into thirteen districts, to each of which a resident judge was appointed. These districts (except those of Kentucky and Maine) were again classed into three circuits—the eastern, middle, and southern. In compliance with the express injunctions of the Constitution, a Supreme Court was also established, the members of which were composed of a chief justice and five associate judges. The chief justice and his associates were not only to do the duty of judges of the Supreme Court, but alternately to make the tour of the United States; and two of them, united with the district judge of the district in which they met, were to hold the circuit court. North Carolina and Rhode Island having afterwards accepted the Federal Constitution, were erected into new districts, as were also Vermont and Tennessee, upon their being admitted into the Union as separate and distinct States.

Such, in a few words, was the system originally adopted in the year 1789. But no sooner had it been put into operation, than the inconveniences and defects of it began to be perceived and felt. In the very next year, (as early as the year 1790,) the attention of Congress was called again to the Judiciary; and the Attorney General (Edmund Randolph) was desired to report, and did present a very detailed and elaborate report, on the subject. In the course of this report, Mr. Randolph (as I shall presently show) disapproves, in the most unequivocal terms, of the principle which had been adopted of making the judges of the Supreme Court ride the circuits, and recommends the very change which was introduced into the law of the last session, and is now so much reprobated by his political friends. Nothing, however, having been done in the business at that time, complaints continued to pour in from all quarters; and a succeeding Congress found themselves (in 1799) obliged to modify the law so far as to do away the necessity of two judges in the Supreme Court attending the same circuit, and to allow a circuit court to be held by the district and a single judge of the Supreme Court. This modification of the law lessened, it is true, the bodily labors of the judges, and so far obviated the inconveniences which had been experienced. But the remedy was still not found equal to the disease. Did a judge attempt to proceed by sea, from the eastern

or middle, to South Carolina, or any other of the Southern States, the vessel failed perhaps to sail at the time appointed, or was delayed by contrary winds, and the business of the court was consequently delayed, or postponed altogether to another term. Was a land conveyance preferred, the rising of rivers, bad roads, bad horses—a thousand other accidents to which travellers are necessarily liable—not unfrequently interrupted in the same way the business of the courts; and suitors, after a great expense of time, money, and trouble, were sent home as they came, with their business unsettled and undecided.

These physical impediments alone, not to speak of the instability and want of uniformity in the decisions and proceedings of the circuit courts, which were the necessary and inevitable consequences of this constant change in the person of the judges living in different parts of the United States, and accustomed in their several States to such different and sometimes contradictory rules and modes of transacting business; these physical impediments, I say alone, soon convinced all reasonable men, who had anything to do with the courts, how defective and inadequate to the due administration of justice, must necessarily be this system of sending the judges, like so many post-boys, whipping and spurring through mud and mire, from one end of this vast continent to the other. Complaints and representations, therefore, were still made from various quarters, and a revision of the Judiciary was again and again, year after year, recommended to Congress, as well by the Executive as the judges themselves. I well recollect, indeed, from the time of my return from Europe, in the latter end of the year 1791, and long before I had it even in idea that the indulgence and partiality of my fellow-citizens would honor me with a place on this floor—I well recollect to have heard this plan of an itinerant judiciary complained of and reprobated in every company, and not the least by those characters in my own State, whose opinions and judgments I was most accustomed to respect and revere. I recollect equally well, sir, that at the commencement of the session, in which I was first honored with a seat in Congress, a revision of the Judiciary was recommended by the Executive, and a committee, composed of some of the most able and respectable members of this House, were appointed for the purpose of taking this subject into consideration, and did report a bill for the better organization of the Judiciary. This bill, after having been a number of times under consideration, and undergone a variety of amendments, was committed to the same committee, who, in conformity with the amendments adopted in the House, gave it a new shape and reported a second bill, of which the present law is, I believe, nearly an exact copy.

And here, sir, permit me to observe, in contradiction to what has fallen from several gentlemen, the honorable member from Virginia (Mr. GILES) in particular, and what has been so constantly urged out of doors, that the present organization of the Judiciary was predicated entirely on party

FEBRUARY, 1802.

Judiciary System.

H. OF R.

grounds, and with a view to the changes of party which have since taken place; in contradiction to this assertion, permit me to observe that, at the time I am now alluding to, when a revision was recommended by the Executive, and the bill, of which I have just spoken, was presented to the House, the Federal sect, as it has been since termed, was in the zenith of its glory, in the height of its power. An election had lately taken place, and a larger majority was returned in favor of the Federal Administration, than had ever before appeared in any former Congress, nor was there the least reason to anticipate the change of men which has since taken place. The framers, therefore, of the new system, have been most erroneously and unjustly accused of bringing it forward in the expectation of such a change; the very contrary being the fact, and the present system having been presented to Congress at the very moment when their political prospect bore the brightest and most promising aspect. Partly owing, however, to the deference which many had for the gentleman who was the author of the old plan, partly owing to the difference of opinion among the Federalists themselves, whether it was most expedient to change this plan altogether, or to endeavor to remedy the evils complained of, by adding a certain number of additional judges to the Supreme Court, and partly to the press of business, and an inclination to give time for further consideration, the subject was allowed to lie over until the next session.

We had scarcely met, however, for the first time at the present seat of Government, long before the fate of the Presidential election was known, when the subject was again taken up, and the House were called on to adopt the law, which finally prevailed. After this plain tale, this simple narrative, the truth and correctness of which no one will deny, I leave it to the Committee and to the world to decide, with what propriety or justice this system has been branded and reprobated in such glowing colors as a hasty, novel, and unnecessary measure, hurried through the two Houses at the fag-end of a dying Administration, for the purpose of affording sinecure retreats to a few favorite characters. Gentlemen may show their ingenuity and inventive talents by the fabrication of such tales at the time of elections, but let us hear no more of them in this place.

There appears to me, indeed, Mr. Chairman, to have been a radical error in the original organization of that part of the old plan which relates to the circuit courts. In this opinion I am happy to have it in my power to show that I am supported by that of the gentleman already alluded to, Mr. Edmund Randolph, a gentleman high in the ranks, and high in the estimation of our political opponents. In the report presented by Mr. Randolph to Congress, in the year 1790, and which I have before quoted, to prove that the principle adopted in the present law, so far from being a novel one, was in contemplation from the very commencement of the Government. In this report, Mr. Randolph expresses himself in

7th Con.—22

the following words, which, as they come from a quarter gentlemen cannot object to, will, I trust, command their attention, and have due weight with them in making up their minds on the present question :

“ A third alteration which the Attorney General cannot fail to suggest is, that the judges of the Supreme Court shall cease to be judges of the circuit courts. It is obvious that the inferior courts should be distinct bodies from the Supreme Court. But how far it may confound these two species of courts to suffer the judges of the supreme to hold seats on the circuit bench, he declines the discussion, and circumscribes his reflections within the pale of expediency only :

“ 1. Those who pronounce the law of the land without appeal, ought to be pre-eminent in most endowments of the mind. Survey the functions of a judge of the Supreme Court. He must be master of the common law in all its divisions; a chancellor, a civilian, a federal jurist, and skilled in the laws of each State. To expect that, in future times, this assemblage of talents will be ready without further study for the national service, is to confide too largely in the public fortune. Most vacancies on the bench will be supplied by professional men, who, perhaps, have been too much animated by the contentions of the bar deliberately to explore this extensive range of science. In a great measure, then, the supreme judges will form themselves after their nomination. But what leisure remains from their itinerant dispensation of justice? Sum up all the fragments of their time, hold their fatigue at naught, and let them bid adieu to all domestic concerns, still the average term of life, already advanced, will be too short for any important proficiency.

“ 2. The detaching of the judges to different circuits defeats the benefits of an unprejudiced consultation. The delivery of a solemn opinion in court commits them, and should a judgment rendered by two be erroneous, will they meet their four brethren unbiassed? May not human nature, thus trammelled, struggle too long against convictions? And how few would erect a monument to their candor at the expense of their reputation for firmness and discernment!

“ 3. Jealousy among the members of a court is always an evil, and its malignity would be double should it creep into the Supreme Court, obscure the discovery of right, and weaken the respect which the public welfare seeks for its decrees. But this cannot be affirmed to be beyond the compass of events, to men agitated by the constant scanning of the Judicial conduct of each other.

“ 4. If this should not happen, there is fresh danger on the other side, lest they should be restrained by delicacy and mutual tenderness, from probing, without scruple, what had been done in circuit courts. A schism of sentiment before a decision and after a free conference is not esteemed harsh; but it is very painful to undertake to satisfy another that, in a public opinion, already uttered, he has been in the wrong.

“ 5. Situated as the United States are, many of the most weighty Judiciary questions will be perfectly novel. These must be hurried off on the circuits, where necessary books are not to be had, or relinquished for argument before the next set of judges, who, on their part, may want books and a calmer season for thought. So that a cause may be suspended until every judge shall have heard it.

“ 6. The supreme judges themselves, who ride the circuits, will be soon graduated in the public mind in

relation to the circuits; will soon be considered as circuit judges, and will not be often appreciated as supreme judges. When a discomfited party looks up to the highest tribunal for redress, he is told by the report of the world, that in it every quality is centered necessary to justice. But how would his sanguine hopes be frustrated, if, among six judges, two are most probably to repeat their former suffrages, or to vindicate them with strenuous ability, or if to avoid this, the wisdom of the third of the number must be laid aside?"

I am, then, supported by this high authority and these powerful arguments in saying, that the inferior courts ought to be distinct bodies from the Supreme Court. It is evident, however, that, under the old organization of the Judiciary, these two species of courts were, in a great degree, amalgamated and confounded. I do regard this, sir, as a radical vice in the old system, and I have my doubts, (which seems also to have been the case with the learned gentleman whom I have just quoted, though he does not, it is true, express himself to this effect, in clear and positive terms;) I have my doubts whether the plain meaning and intention of the Constitution has not been in this point infringed. When that instrument provides "that there shall be a Supreme Court and such other inferior courts as Congress shall from time to time ordain and establish," can any one suppose the object of this provision to be merely that the courts should be nominally distinct, and be known under different appellations, but might be all held by the same individuals, the same set of judges, presiding alternately in each of them? This system of constantly appealing from the decisions of men, sitting in a lower, to the same men, seated under a new title, in a court of higher grade, appears to me neither to satisfy the obvious intention of the Constitution, nor to comport with the dictates of common sense. But, if such a principle be tolerated even in the inferior courts, it is obviously incorrect as relates to the Supreme Court, a court of the last resort, and from the decisions of which there is no appeal. Let me ask, sir, what must be the feelings, what necessarily the impression on the minds of foreign or domestic suitors, drawn from the remote parts of the Union, who, on an appeal from the decision of a district judge, meet the same individual seated in a higher capacity, on the circuit bench, and when again on a further appeal to the Supreme Court, they recognise the same faces, the same individuals, from whose decisions in the circuit courts, they had just before appealed? Can it be presumed that suitors will, in this case, go away as well satisfied, as perfectly convinced of the equity and justice of a confirmation of the decisions of the courts below, as they might be expected to do, had they found this final and ultimate decree to proceed from an entirely new set of judges, unprejudiced and unfettered by what had preceded, and presumed from their high grade, to be of the most eminent talents and first standing in society? Yet such was the necessary consequence of the former organization of the courts. And what else has been contemplated in the new system, but to obviate this inconvenience, and do away this excep-

tionable part of the old plan? The only change, in fact the vital principle of the present law, is nothing more nor less than to establish the point that, instead of the same individuals sitting and holding the different courts, each district court should have its separate and distinct judge or set of judges. Now where, I pray you, sir, is the mighty error, the great crime committed in bringing about this change? I ask with confidence, whether the principle be not correct in itself, and whether it does not accord equally with the dictates of common sense, and the plain meaning and fair construction of the provisions contained in the Constitution?

If, however, it can be for a moment supposed to have been the intention of the wise men who framed the Constitution, that the national courts were to be distinct in name, but to be all held by the same individuals, the same set of judges; if it be the wisdom and enlightened policy of the present day to establish, not the most wholesome and convenient organization of the Federal Judiciary, but that which will save the greatest number of pence and require the smallest possible number of judges, why not get rid at once of all the judges of the inferior courts? The Chief Justice and his five Associates, or even the half of them, could no doubt dispatch all the business of the Federal courts. They might be packed up in a State wagon, make in due course the small circuit of this petty empire, and decide all the trifling and unimportant causes which would be brought before them, alternately sitting as judges of the district, circuit, and supreme courts. We should, by such an arrangement, not only save the twenty or thirty thousand dollars, which is so much complained of, and may be appropriated so much more advantageously to the payment of the President's salary, but a still further sum of seventy-seven to eighty thousand dollars; a sum equal to the whole amount of that most abominable of all abominable taxes, that tax so grinding to the poor, which, we are told, it requires such a host of officers and such an enormous per centage, to collect which takes from the mouth of labor such an immense portion of its earnings, and which of course must and ought to be repealed. I allude, Mr. Chairman, to the tax so well known under the title of a tax on pleasurable carriages. Gentlemen would, in all probability, have the further gratification of seeing the number of causes diminish daily in the Federal courts, and when we are favored with another exact statement on this subject, it will be found, perhaps, that they are reduced, as they no doubt ought to be, merely to those affecting Ambassadors, other public Ministers and Consuls. The whole business of the Union will thus be happily restored to the State courts, to which it of right belongs, and from which it has been torn, *vi et armis*, under the wicked Administrations of Washington and Adams, and heretofore retained, in spite of, and in direct opposition to, the wishes of the parties most immediately concerned.

But in another and still more comprehensive view of the subject, it would seem to me, Mr.

FEBRUARY, 1802.

Judiciary System.

H. OF R.

Chairman, improper and inexpedient to repeal the law of the last session at this time. It is but too true, we all know it, sir, that parties do exist in our Government; that shades of political difference do unfortunately divide the American people. In free Governments this must ever be the case. Still, however, let it not be forgotten that we are citizens of one and the same country, and have a common interest in the public and general welfare. Would it not then be wise and prudent, would it not tend to do away, in a great measure, the baneful effect of party, and to promote harmony among our fellow-citizens, if in the changes of men and of parties, which must necessarily take place in the administration of public affairs, we accustomed ourselves to act with some little delicacy towards each other, and to pay some little respect to the measures of those who have immediately preceded us? Whilst we improve and amend what in practice is found useless or inadequate to the end proposed, would it not be as well to forbear from making innovations merely for the sake of change, or to gratify our party pique or party feelings? The present system, it is granted, has been established by the political opponents of those now in power. Be it so. The preceding organization of the Judiciary, however, was a wretchedly defective and inadequate to the due administration of justice. Some amendments have been made to it. A new system has been adopted. It is just carried into operation, and all the inconveniences and expense which usually attend such changes, have been felt and incurred. No one can pretend to complain of any defects in the present establishment from experience, for it is scarcely yet carried into complete operation. Would it not be as well, then, to try the experiment, to wait and see the practical advantages or disadvantages of the system? It would be prudent also, I humbly conceive, sir, to take this course for another reason, viz: the effect which these frequent and sudden changes in our most important establishments must be expected to have on our credit, and in no small degree, perhaps, on the reputation of our Government among foreigners. Fickleness and instability have ever been the bane of republican institutions. The nations of Europe know this well. They have their eye upon us, and watch all our motions. This want of stability in our establishments; these sudden and hasty changes in our measures, cannot, therefore, but affect our reputation and character, as well abroad as at home.

One word, sir, before I conclude my observations on this part of the subject, with respect to the additional expense incurred by the new arrangement. It has been said, that the Federal Judiciary costs the United States one hundred and thirty or forty thousand dollars; and from the manner in which this sum is brought forward and presented to our view, it might seem that the whole of this expense was to be attributed to the new system. What, however, is the fact? Upon a fair statement, and after making the deduction of the salary of one judge of the Supreme Court, whose place is vacated after the death of the present incumbent, the additional expense will be only from

twenty-five to thirty thousand dollars. It is further to be observed, even with respect to this sum, that the number of judges of the Supreme Court, had the old establishment been retained, or should it now be revived, is allowed on all hands to be inadequate to the bodily fatigue and duties imposed upon them. Gentlemen have consequently all acknowledged it heretofore, and several of them, the member from Massachusetts (Mr. BACON) in particular, have in the course of the present debate stated it as their opinion, that it would be necessary to increase the number of judges of the Supreme Court, if the present bill prevails. Now it is to be recollected, that the associate judges receive a salary of three thousand five hundred dollars each, and laying aside the danger of rendering this body inconveniently numerous and unwieldy, by augmenting their numbers, each additional judge must receive the above salary of three thousand five hundred dollars; whilst the present circuit judges are allowed but two thousand dollars per annum. The addition, therefore, of half the number of judges to the Supreme Court (which there is every reason to believe it is in contemplation to make, if the circuit judges are gotten rid of) would cost the United States, within a few hundred pounds, if not quite as much, as the additional judges required under the present arrangement, to get rid of whom such extraordinary pains are taken, and an expense of twenty or thirty thousand dollars already incurred, even in carrying the business thus far through the two Houses of Congress. Such is the saving wisdom, the wonderful economy, of these enlightened days! We set the whole nation in a flame, and spend thousands in one way, to the end that we may have the appearance of saving a few hundreds in another.

But, however wholesome and proper the amendments which took place at the last session in the organization of the Federal courts, appear to me to have been, I should submit without difficulty to the proposed repeal, did it only involve the mere question of expediency. I should be perfectly satisfied to gratify the whim and caprice of the majority who have at the present time the control over public affairs, in this as well as so many other respects. It is not on this ground, sir, that I am led to make so decided an opposition to the measure under consideration, and look forward with such trembling anxiety to the result of the present debate. Very different motives, considerations of a far more important nature influence my conduct and vote on this occasion. To me it appears that one of the great principles, one of the leading excellencies of our national compact is in danger of being destroyed. I feel a strong conviction on my mind, that the most stable support, the main pillar of the noble fabric already totters on its foundation, and is about to be tumbled prostrate in the dust.

We have heard a great deal, Mr. Chairman, both within and without these walls, of the discoveries and improvements which have of late years been made in the science and practice of government. Among these I had been taught to regard as by

no means the least important, that maxim, which goes to establish the complete separation of the three great branches of Government, the Executive, Legislative, and Judiciary. I had, till the present day, been taught to reverence as a still more important discovery, as the climax of improvement in modern jurisprudence, the principle we now contend for, and which asserts the absolute independence of the latter of the other two branches of Government. Such is the doctrine I have seen inculcated in all modern authors of reputation, which have fallen into my hands. This political creed I had, I thought, imbibed from the best publications, and most approved authorities of our own country, and from none more decidedly than that so well known under the title of "The Federalist;" a work attributed to the joint labors and combined talents of three of the most able statesmen America can boast, and avowedly the best commentary on the Federal Constitution which has made its appearance in print. I will not take up the time of the Committee by referring to the different parts of this celebrated work, which go to the support of the doctrine we advocate. It is in the hands of every one, and I call upon, I challenge gentlemen to point out the page, the sentence, or the line, which does not inculcate and strongly enforce this principle of the entire and absolute independence of the Judiciary. There is another authority, however, of equal eminence, though of later date and less notoriety, to which I shall beg leave to call the attention of the Committee.

In the former part of my argument, I had it in my power to produce in support of the expediency of the judicial system, adopted by us at the last session, an official opinion, (given at an early period of the present Government,) of a learned gentleman, high in the ranks, and no less high in the estimation of that very party which now oppose it with such vehemence and clamor. I am so fortunate, sir, as to be at present able to offer to the Committee, an authority equally high, and in no way less respectable, also drawn from the State which at this time takes the lead, and from the ranks of our political opponents, to prove the Constitutional doctrine we are contending for. I have in my hands, sir, a paper containing the sentiments on this subject, delivered long before it was foreseen that the present question would be agitated on this floor, of one of the most eminent law characters of the State of Virginia—the gentleman who has been selected to inculcate the principles of republicanism in the minds of the youth of that country, and to teach them the genuine doctrines of our State and Federal Constitutions. I now allude to Judge Tucker, professor of law in the college of William and Mary, and one of the judges in the Supreme Court of Virginia. This document, from which I am about to state the opinion of the learned judge on this Constitutional point, does not, it is true, come recommended by an official stamp, as did the report of the Attorney General. It carries, however, with it, every mark of authenticity, nor have I any reason to doubt, but that it contains the gen-

uine sentiments of this celebrated professor, as coolly and calmly made up in the retirement of his study, and delivered by him to his pupils in his public lectures. If I am mistaken, and the sentiments which have been attributed to Mr. Tucker are not genuine, there are several gentlemen, one in particular, not now in his seat, but in the House I believe, (Mr. RANDOLPH,) who will have it in their power to correct me, and state the truth to the Committee. Having premised this much, sir, I shall now beg leave to state the opinion and sentiments of the learned Judge in his own words, to wit:

"The Constitution and powers of the Judiciary department of the Federal Government have been equally the subject of applause and censure, of confidence and jealousy.

"The unexceptionable mode of appointing the judges and their Constitutional independence of every other branch of the Government, merit an eulogium, which all would have concurred in bestowing on this part of the Constitution of the United States, had not the powers of that department been extended to objects, which might hazard the tranquillity of the Union in attempting to secure it."

[Mr. Tucker then proceeds to define more at large the powers and objects here alluded to, but concludes with the following remarks:]

"All these objections, seem, however, to be completely removed by the amendments which were recommended by the first Congress, and have since been ratified."

[The Judge here again goes on to speak of the suability of the States, through which subject, the Constitution being in that respect also amended, it is unnecessary to follow him; after which he thus proceeds:]

"But whatever objections may be made to the Judicial power of the Federal Government, as it relates to the States, in other respects, as now organized and limited by the Constitution itself, by the amendments proposed by Congress, and since adopted, and by the act above referred to, (to wit, the act limiting the jurisdiction to a certain sum,) we may venture to pronounce, that it is worthy every eulogium that ever has been pronounced on the Judiciary of Great Britain, to which it is in no respect inferior; being indeed in all respects perfectly assimilated thereto, with the addition of a Constitutional instead of a legal independence only. Whatever there has been said by Bacon, Montesquieu, Delolme, Blackstone, or any other writer, on the security derived to the subject from the independence of the Judiciary of Great Britain, will apply at least as forcibly to that of the United States. We may go still further: In England the Judiciary may be overwhelmed by a combination between the Executive and Legislature. In America it is rendered absolutely independent of and superior to the attempts of both to control or crush it. First, by the tenure of office, which is during good behaviour." Secondly, by the independence of their salaries, which cannot be diminished. Thirdly, by the letter of the Constitution, which defines and limits the powers of the several branches of Government. Lastly, by that uncontrollable authority in matters of legislation, which is exclusively vested in that department, and which extends to every possible case, that can affect the life, liberty, or property of the indi-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

vidual, as a member of the Federal Republic, except in the case of impeachment. The American Constitution appears to be the first in which this absolute independence of the Judiciary has been carried into full effect. Dr. Rutherford considers the Judiciary as a branch of the Executive authority, and such in strictness it may still be considered in other countries, since its province is to advise the Executive rather than to act independently thereof. In this sense, the Judiciary are said to be one of the King's councils in England—but with us the Judiciary power is a distinct and independent branch of the Government, recognised as such in express terms in our State bill of rights and constitution, and demonstrably so too, by the Constitution of the United States, from which it derives all power, in like manner as the Executive and Legislative powers are distributed to the other departments of the Government. The obligation which the Constitution of the United States imposes upon the Judiciary to support the Constitution would be nugatory, if it were dependent on either of the other branches, or in any manner subject to control by them, since such control might operate to the destruction of the Constitution."

"And here we cannot but observe, that the Judiciary power cannot of itself oppress the citizen. The Executive must lend its aid in every case, where oppression can ensue from its decisions; but its decisions in favor of the citizen are carried into instantaneous effect, by delivering him from the coercion of the Executive officer, the moment that judgment of acquittal is pronounced, and herein consists the excellence of our Constitution, that no individual can be oppressed whilst this branch of the Government remains uncorrupted: it being a necessary check upon the encroachments of power by either of the other. Thus, if the Legislature should pass a law dangerous to the liberties of the people, the Judiciary are to pronounce not only whether the party accused be guilty of a violation thereof, but whether such law be permitted by the Constitution. If, for example, a law were passed prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to assemble peaceably, or to keep and bear arms, it would be the province of the Judiciary to decide that the power of the Legislature did not extend to the making of such a law, and consequently to acquit the prisoner from any penalty, which might be annexed to the breach of such an unconstitutional law.

"Should he be persecuted by the Executive, it is the province of the Judiciary to decide, whether there be any law that authorizes the proceedings against him, and if there be none, to acquit him not only of the present but of all future prosecutions for the same cause. The power of pardon, which is vested in the Executive, constitutes a proper check on the Judiciary in its turn. On this circumstance, however, no great stress can be laid, since in criminal prosecutions the Executive is, in the eye of the law, always plaintiff, and where the prosecution is actually carried on by its direction, the purity of the Judiciary is the only security for the citizen. The Judiciary, therefore, are that department of the Government, to whom the protection of the rights of the citizen is by the Constitution especially confided."

Such, sir are the sentiments of this learned and enlightened judge; a gentleman, as I before observed, avowedly and well known to be of the political party of the other side of the House. And let me ask, whether it be possible to bring, on any subject, an authority more to the point in dispute;

or whether Mr. Tucker could have expressed, in terms more forcible and less equivocal, his opinion in favor of the doctrine we advocate, viz: that the Judiciary is a distinct and separate branch of the Government, and that it is equally and absolutely independent, as well of the Legislature as the Executive, or of both united. Such, too, I contend, and firmly believe, to have been heretofore the approved and generally received doctrine of the American world, and such appears to me to be the language which the people of America have spoken, as well in their State constitutions as in our federal compact. Will you permit me, sir, to turn to these constitutions and see what is the language they hold on this subject.

In the bill of rights, prefixed to that of New Hampshire, I find these words: "The three essential powers of Government, viz. the Executive, Legislative, and Judicial, ought to be kept as separate from, and independent of each other, as the nature of a free government will admit." In another section, "It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore, not only the best policy, but for the security of the rights of the people, that the judges should hold their offices so long as they behave well." These provisions were, I believe, borrowed from, and are to be found nearly verbatim in the constitution of Massachusetts. In New York, Pennsylvania, and Delaware, I find these three branches separated with the same care, and the judges declared to hold their offices during good behaviour. The constitution of Maryland expressly provides "that the Executive, Legislative and Judicial powers of the government ought to be forever separate and distinct from each other, and that the judges ought to hold their commissions during good behaviour." In the constitution of the State of Virginia, I meet with the same sentiments, to wit: "The Legislative, Executive and Judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other;" and I find it further provided, that the judges shall continue in office during good behaviour. But it would be superfluous to encroach longer on the patience of the Committee, by other examples from the State constitutions. They all of them establish the complete separation of the three great branches of government; all of them inculcate, more or less strongly, the independence of the Judiciary on the other two branches, and, with one or two exceptions, all adopt the tenure of good behaviour, as that, under which the judge are to hold their offices. In this place, therefore, it may not be amiss to say a few words with respect to this tenure, and to examine how far it extends.

To an unprejudiced mind, to a man of plain but sound understanding, making up his opinion from the usual meaning and common acceptance of words, it would I think appear, that a right or power given to be held and exercised during good behaviour, would, and ought to be retained by the person, on whom it was bestowed, so long as he continues to behave well, nor could he forfeit it otherwise than behaving ill, i. e. ceasing to behave

well. It is now contended, however, that we are not to judge of the force and effect of these words, according to their plain meaning and common acception. We are told, that the words "holding during good behaviour" compose a technical phrase, and that in order to apply them correctly, we must cast our eyes across the Atlantic, and see what is their operation in England, the country from which we derive them.

Mr. Chairman, it has not been my good fortune to be initiated in the mysteries of the law. I am no professional man; nothing more or less than a plain farmer, or to use a more appropriate term of my native State, a plain and, I trust, honest planter. I cannot hope, therefore, to throw much light on a legal question; nor do I feel myself adequate to the discussion of legal terms and niceties. I will, nevertheless, claim the indulgence of the Committee, while I make a few observations on the subject, even in this point of view.

In the earlier stages of the English, as well as many other European Governments, the King sat and administered justice in his own immediate person. This state of things, however, neither could nor did last for any very considerable length of time. It was soon found expedient to dispense with the personal attendance of the Prince, and the administration of justice devolved on certain substitutes, who were still supposed to represent his person, acted in his name, and held their offices at his pleasure. As the darkness and ignorance of the middle ages were dispersed, and the inhabitants of Europe became more enlightened, the feudal chiefs in the first instance, and afterwards the people, generally, increased in power, and procured to themselves certain rights and charters. By degrees they came also to participate in the legislation and government of the country. But the laws were still interpreted, and justice administered, by the creatures of the Crown; and experience sufficiently proved, that while the judges were left at the mercy of the Prince, they would invent modes and find evasions, by means of which the will of him on whom they depended might be carried into execution. The necessity, therefore, of establishing the independence of the judges became evident, and the people of England, after a long struggle, succeeded in carrying this point. The judges, instead of holding their commissions *durante bene placito*, during pleasure, as heretofore, received them under a new tenure, *quam diu se bene gesserint*, during good behaviour; nor could the King any longer remove them, except on an address from both Houses of Parliament. This was all that was necessary, all that was required, all that could be done; for, as the two Houses of Parliament and the Crown united, possess what has been styled political omnipotence, as they act not only in the confined sphere of agents, bound down by certain fixed rules and a written constitution, but are supposed also to represent the nation in its original capacity, there is nothing so sacred under this system of government which they cannot and do not control and alter at their pleasure and discretion. The Judiciary continues, nevertheless, in that country, to

be a subordinate department; the judges continue still to hold of, and from the Crown, to administer justice in its name, and are supposed to be an emanation from the regal power. The courts are still called the King's courts; the judges, the King's judges. This being the case, as respects the King's power and prerogatives in England, gentlemen now bring forward the monstrous doctrine, that the Executive stands precisely in the place of the Crown, and imply that the Judiciary are placed in precisely the same relative situation with respect to him as that of England is to the Crown. Is this really the case, Mr. Chairman? Is the Judiciary of the United States really subordinate to the Executive? Do the judges indeed hold, as the gentleman from Virginia (Mr. GILES) tells us, of and from the President, that very President, at whose trial, in case of impeachment, one of them is to preside; do they indeed administer justice in his name? Does their power emanate from him? Are the Federal courts the courts of the President, the Federal judges his judges? No, sir, the Federal courts are the courts of the United States. Justice is administered in the name of the United States. The judges are only known as judges of the United States. They hold their commissions of and from, and act under the authority of the United States. What, then, is the fair inference? Against what power under our Constitution was the tenure of good behaviour intended to operate? I say, sir, the fair and honest inference is, that this tenure was intended as a limitation and restraint against the United States in its corporate capacity; that is, against the Government of the United States, which in fact and in truth, are placed in the same relative situation with respect to the Judiciary, in which the Crown stands in that country of which we have been speaking. The native citizens of America, Mr. Chairman, are a plain but shrewd people, of sound and distinguishing minds, and possessed of their full share of common sense. They are not apt to do things idly, to adopt measures which mean nothing, and are of no avail. It, therefore, is paying them but a poor compliment, to suppose that when they adopted this tenure they intended it to operate only against that branch of the Government which did not possess the powers and prerogatives, against which the check was originally aimed and directed in the country from whence we are supposed to borrow it. They looked not, sir, to the sound, but the substance; they regarded not the name or the title, but the thing itself; they meant not to combat a shadow, a nonentity, but to limit and restrain the power itself, in whatever branch it might appear to have been deposited under the Constitution, and which, possessing or assuming the prerogative of the British Crown, might be disposed to make the Judiciary a subordinate department of the Government, or to affect the independence of the judges. Therefore, whatever branch of the Government assumes this power, from whatever quarter the attempt is made to render the Judiciary subordinate to its will and pleasure, and to infringe the independence of the judges, this Constitutional barrier stares them in

FEBRUARY, 1802.

Judiciary System.

H. OF R.

the face, and upon a fair and honest construction of the tenure under which the people have willed that the Federal judges should hold their commissions, they can only forfeit them, (while the Constitution lasts, or until the people think proper to alter it) they can only forfeit them by ceasing to behave well; they can only be deprived of them by impeachment.

That this is the construction heretofore given to the tenure of good behaviour in the American world may, I think, also be proved by a further reference to the State constitutions. In those of New Hampshire and New York, it is expressly declared, that the judges, who hold their offices during good behaviour, shall not continue in them after reaching a specified age—sixty or seventy years—and in that of Massachusetts, that the Governor, with the consent of Council, may remove the judges, holding under the same tenure, upon the address of both Houses. Here I say, in the first instance, the exception proves the rule. If the judges were not to hold their offices (but for this exception) during their lives and good behaviour; to what end, with what possible view, was the exception as to age introduced? In the latter case, if the other two branches have, (as is contended) in the nature of things, and of course, the right of deranging and the power of depriving the judges of their offices, why was the proviso adopted? What necessity could there have been to grant this power expressly to them in the Constitution? Is it not fair and correct to imply from this proviso, this express grant; that, in the opinion of the framers of that Constitution, the Legislature would not otherwise have possessed the power therein given? Again; in the constitutions of Pennsylvania, Delaware, &c., it is provided, that the judges shall hold their offices during good behaviour, (subject however to impeachment;) but for any reasonable cause, which shall not be a sufficient ground of impeachment, the Governor, at his discretion, may remove any of them on the address of two thirds of each branch in Pennsylvania, and in Delaware, on the address of two thirds of all the members of each branch of the Legislature. Now, sir, does not the *major* include the *minor*? If then, it was contemplated by those who framed these constitutions, that a simple majority of the two Houses could pass a law, which would, to all intents and purposes, derange and remove the judges from office, why in the name of common sense require, as we have just shown is done in the constitutions of Pennsylvania and Delaware, an union of two thirds of all the members of both branches of the Legislature to effect the same thing, viz: the removal of the judges?

Far, however, as these examples go to show the effect which this tenure was supposed to have in restraining the power, as well of the Legislature as the Executive, the point is still more triumphantly and unanswerably proved in the case of those States in whose constitutions no specific mode is provided of removing the judge, except by impeachment, and in which the Executive neither exercises, nor has the power of removing

an incumbent from office. Such is, for example, the case in North Carolina, and in the State I have the honor immediately to represent. Here the judges are chosen by joint ballot of both Houses, and hold their offices during good behaviour. The Executive however neither does nor can remove any civil officer from office who holds a commission at pleasure. Did the judges, therefore, hold under this inferior tenure, they would be still out of his reach, beyond his authority and control, yet the Constitution declares, "they shall hold their commissions during good behaviour." Why, then, is this particular tenure secured to them by the Constitution? In whose hands is the power placed against which it is intended to operate and secure them? Certainly not in the hands of the Executive, for we have just seen that he cannot remove from office even in cases where the commissions run "during pleasure." If, therefore, anything is meant by this provision in the constitutions of these States, the intention and object must have been thereby to limit and restrain the power of the Legislature; and as I have never yet heard it contended that a public officer, holding during good behaviour, could be turned out of office by a simple vote or resolution of the two Houses, or by an express act passed for that purpose, it follows, that this tenure was adopted to prevent them from doing the same thing by a side wind, by deranging the individual thus secured, and taking his office from him.

From this hasty review of the State constitutions it would appear, that in the general received opinion of the American people, the tenure of good behaviour, where no express provisions to the contrary were introduced in their State constitutions, went to secure the independence of the judges and their continuance (the very term made use of in the constitution of Virginia) in office, equally against the attempts and encroachments of the Legislature and Executive.

The wise men who framed our Federal compact were perfectly aware of this. The State constitutions were all before them. They were well acquainted with the sentiments and opinions of the people in every part of the continent. They deemed it, however, most expedient to omit the various exceptions, contained in the several State constitutions; and in establishing the Federal Judiciary, they carefully provided that the judges, both of the supreme and inferior courts, should hold their office under the pure and simple tenure of good behaviour, subject to a possibility of removal from office in no other way under the Constitution, save only by impeachment. So far were they, indeed, from intending that a bare majority of the two branches of the Legislature, uniting with the Executive, should have the important and effectual power of deranging and getting rid of the judges by putting down their offices, that they would not even trust them with the much inferior power of reducing their salaries, but expressly provide that the salaries of the judges should not be diminished during their continuance in office. In the only instance in which they grant the power of removal, viz: by im-

peachment, they avoid giving the Executive any agency whatever in the business; they suspend all the Legislative functions of the Senate and House of Representatives, and introduce them entirely in a new character, by making of the latter a body of accusers, and converting the Senate into a court of justice. They go further, and from abundant caution provide at the same time in cases of impeachment, that no person shall be convicted without the concurrence of two-thirds of the members of the Senate, before whom he is impeached.

But granting for a moment that the tenure of good behaviour was intended more immediately as a check against the Executive; whence, I pray you, does the Legislature obtain the right of disregarding this check, and removing the judges in spite of this express limitation of any and every such power? Will any one contend that they can exercise a power not given them by the Constitution? If not, I repeat the request of the member from Pennsylvania, (Mr. HEMPHILL,) that gentlemen will turn to the page and point their finger to the clause which gives even the semblance of any such power to the Legislature alone, or united with the Executive. And if, as is the fact, no such power is given in the Constitution, I ask with the same gentleman, how this Committee can possibly get over the provisions contained in the tenth amendment to the Constitution? viz: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

In the face of all this, and contrary to the practice which has heretofore invariably prevailed as well under the State governments, as that of the Union at large, gentlemen now tell us that the members of this separate, distinct, and co-ordinate branch, are left at the mercy of every political gale that blows, and subject to the whim and caprice of every party, which may chance from day to day predominate in the other two branches of the Government.

The error of this novel doctrine seems to me, sir, to arise from an impression on the minds of gentlemen which lead them to suppose, that as the Executive and Legislative branches are elected by, and therefore presumed to be the more immediate representatives of the people, they are in fact one and the same with the people, and possess all the powers of the great body of the nation in its original capacity. They forget in how narrow and limited a sphere they are delegated to act, assimilate themselves to the Parliament of Great Britain, and would fain assume the political omnipotence, which is supposed to vest in that body; or to express my idea still more clearly, and in American language, they regard themselves, not merely as sitting here in a legislative capacity under a written constitution, but as possessed of the much higher and more important powers of a convention. But will any one at this time, whatever may be done hereafter, come boldly forward and openly avow this doctrine? No, sir, the fact is far otherwise. We are nothing

more or less than the mere agents of the people, empowered to transact the current business of the day; honored, it is true, by the confidence and trust they place in us, but bound down by written rules or instructions, and under an obligation to move within a confined sphere, and within narrow and specified limits. The Constitution is the power of attorney under which we act, and I might as well be told that an agent empowered to dispose of my personal, had of course a right to do the same with my real property; as that we are to judge of the expediency and propriety of the *quantum* of power vested in this or that branch of the Government by the Constitution, and to make its express provisions bend to what we deem right, and what comports best with our own immediate purposes and wishes. When, therefore, the Constitution says, article third, section one, "The judicial power shall be vested in a Supreme Court, and in such other inferior courts as the Congress may from time to time ordain and establish," I contend such must necessarily be the organization of the Federal Judiciary. When it goes on and provides in the subsequent part of the same section, that the judges both of the supreme and inferior courts shall hold their offices during good behaviour, I boldly affirm, that such only can be the tenure under which they can hold their offices; nor have the Government any other means of getting rid of them than that pointed out by the fourth section, second article, viz: impeachment. The Legislature and Executive, whether acting separately or in unison with each other, have no more Constitutional right to evade or contravene the fair and honest meaning of the express tenure, i. e. good behaviour, under which the judges hold, and to derange or displace a judge, either of the supreme or inferior courts, whilst he continues to behave well, than they have to diminish the number of years, during which the Executive now remains in office, or to increase that for which the members of the Senate and House of Representatives are at present elected.

I am not only, however, Mr. Chairman, strongly impressed with the conviction that the framers of the Federal Constitution intended to secure the absolute independence of the Judiciary, as well against the power and control of the Legislature as the Executive, but humbly conceive that they have wisely done so. We have, indeed, heard a great deal of rhodomontade about the dangers which were to be apprehended from an independent Judiciary. We are threatened with an army of judges, and some gentlemen, whom neither the roar of cannon, nor glistening of steel could ever appal, begin already to tremble at the idea of facing a few decrepid old men seated on the bench of justice. But this is the first time, Mr. Chairman, I must confess, that I have ever heard or imagined the independence and consequent impartiality of the judge could give alarm to honest men, strong in the rectitude of their intentions and conduct. To the guilty, indeed, I had been taught to believe such a tribunal, before which party influence and the power of friends

FEBRUARY, 1802.

Judiciary System.

H. OF R.

could afford no protection, was truly awful. The conscious culprit might well tremble—might well dread to appear before a tribunal of this kind. But reverse the position; destroy the independence of the Judiciary; let the judge depend on the nod of the Legislature, or rather of the party which may for the moment prevail in the Legislature, and of what avail will innocence itself be to the accused? Can his innocence protect him against the power of his oppressor, armed with the whole force of the Government, and on a compliance with whose will the judge knows his subsistence to depend? Alas! sir, they are little acquainted with human nature, who suppose that in such a state of things innocence will avail aught.

Those who have power will use it—will command. Those who are subject to and feel the effects of that power, must obey and will forget right. From an *ex post facto* law, from a suspension of the *habeas corpus* in time of peace, from a bill of attainder, or from any other act of violence, however unconstitutional, on the part of the Executive and Legislature, where are we to look up for relief? To what tribunal are we to apply for the protection of our persons and our rights against the predominant faction, or leaders of a faction—against the rage and violence of party zeal and party animosity—if this tribunal, instead of being a barrier, behind which the weak may take shelter, is to become the tool of those in power, and to be made use of as the instrument of their persecution and oppression? In contests between individuals of different States, between the different States themselves, what reliance will be placed in the Federal courts, when deprived of their Constitutional independence? What confidence could one of the smaller States—Delaware, for example, placed as she now is, in the minority, and exposed to a contest of rights with the great and powerful State of Virginia, possessed of the preponderating influence she avowedly has at this moment, in the two branches of the Legislature, and one of her immediate citizens armed with the whole power and influence of the Executive department—what confidence could the State of Delaware place in the impartiality and justice of the national tribunals, if those who are to preside in them and decide on their conflicting claims, are to be dependent on the Legislature and Executive, and of course on the nod and pleasure of Virginia, the most powerful of the parties concerned? What, sir, must necessarily be the consequence of such a state of things? Must it not, will it not, give rise to jealousies, and excite the fears and apprehensions of the least powerful States? Will they not be seeking out for some other protection, some greater security for their rights; and must not the want of an independent tribunal, in which all parties might equally confide, drive the weaker into compacts for their mutual protection against the encroachments of the larger and most powerful States? The next step is an appeal to arms, and a civil war follows. Such must be the natural course of things. Such has been the invariable effect pro-

duced by the same causes among other nations. And I hesitate not in saying that, between an independent Judiciary, constituting a tribunal which can control the unconstitutional attempts of the other two branches of the Government, which dares, without dread or fear, to deal out justice, with an impartial hand, between the weak and the strong, the great and the small; between such a tribunal and the bayonet there remains no resource or alternative.

The great object of Government, Mr. Chairman, is to provide against danger from abroad, and to insure protection at home. For these purposes adequate powers must be lodged somewhere. Place them in what hands you please, dispose of them as you will, still you are exposed to the risk of their being abused, and converted to improper ends. In those governments which approach nearest to monarchy, the powers of the Executive will, of course, preponderate. In proportion, on the other hand, as a government verges more or less to democracy, will the powers of the government vest more or less in the popular branches of it. To show that these branches are liable to error, and will abuse the power entrusted to them, as well as the Executive, cannot be at this day necessary. The experience of every gentleman who hears me, must convince him of this fact. Every page of history equally corroborates it, and proves beyond all doubt that, in the most popular governments, power is at times abused, and injustice and tyranny carried to the utmost unjustifiable lengths. The American people, from one end of the continent to the other, are convinced of these truths. Hence the care and anxiety with which they have separated and balanced the powers vested in different branches of their State governments. Hence the limitations and checks they have introduced with so much caution in their State systems. The sages, who were drawn together from every part of the Union, and who framed the Federal Constitution, knew equally well that the powers necessary to provide for the common defence against foreign invasion, no less than to insure domestic tranquillity, were liable to abuse, might be converted to improper uses, in whatever hands they were placed. These wise men, therefore, endeavored to steer a middle course, and to divide and balance in various ways the power given for these purposes. They deposited such power with the Executive as was sufficient to carry the laws into execution, and to give energy to the national force in times of danger. They gave him a temporary and limited control over the proceedings of the Legislature, as well to protect his own right as to check, in some degree, that fervent zeal and headlong impetus to which all numerous bodies are more or less subject.

With the same view of insuring greater moderation and reflection, and as a mutual check on each other, they divided the Legislature into two distinct branches. Still the history of other nations, the experience of past ages, taught them that all this was not sufficient. They foresaw that popular branches by uniting might overpower the

Executive; or the Executive might, by corruption, induce them to favor his views; or, finally, from whatever cause, these two branches might come to an understanding and unite in a common interest. They had seen examples of all this in the very country from which their forefathers had emigrated; and they well knew that, if these two branches were by any means induced to unite in a common cause, they would construe the Constitution as might best suit their purposes, and all power would of course be in their hands. Civil wars and dissensions, they were perfectly aware would, as had been heretofore invariably the case in other countries, necessarily follow; and this happy country must, sooner or later, swell the long catalogue of Republics which have fallen victims to the same or similar causes, and now exist but in name. To obviate this fatal catastrophe, one only alternative, hitherto unknown or untried by other nations, presented itself to them. This was to establish a third co-ordinate and equal branch in the Government—an independent Judiciary, which, without interfering in the peculiar duties of either of the other two, without having anything to do either in making the laws, or when made, in calling forth the force necessary to carry them into execution, should serve as a protecting shield, as well to individual citizens as the States themselves, against the encroachments and attacks of either or both these branches, acting either separately or in union; should keep each of them in its proper sphere, and check the career of one or both, when stepping beyond the limits which had been assigned them; when trampling on the Constitution, under which the people had authorized them to act, they undertook to extend their powers at pleasure, and to make their will, instead of the written will of the people, the criterion by which their powers were to be judged. These, sir, were the august functions, the all-important purposes, for which the Federal Judiciary were originally intended. And can it be said, is it reasonable, that the judges, who were destined to check the assumption of powers not given, ought or could have been intended to have been left in the power and at the mercy of those very branches whom they are to check and control?

Was this the intention of the Constitution? Was there no other object contemplated in the establishment of the Judiciary, than to have such courts, as might be necessary to dispatch the current business of the day? It would have been sufficient to have given Congress the general power of establishing such courts, as might from time to time be found necessary, and to have simply included it in the enumeration of other powers delegated to Congress in the eighth section of the first article. But what have the framers of the Constitution done in this respect; have they not established the Judiciary in as pointed and direct terms; have they not made it as necessary and distinct a branch of the Government, as either the Executive or Legislature? Turn to the Constitution and you will find, sir, that the same formalities, the same divisions, the very same expressions

are made use of in establishing the one, as the other of these three great departments of the Government.

The first article declares that all Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. The second, in the same way, that the Executive shall be vested in a President of the United States of America. And what says the third article? Why in the very same words, *mutatis mutandis*, that the judicial power of the United States shall be vested in one Supreme Court and such other inferior courts as the Congress may from time to time ordain and establish. Again, article first: "The House of Representatives shall be composed of members chosen every second year; the Senate of the United States of two Senators from each State, chosen for six years." Article second: "The President shall hold his office during the term of four years." Article the third: "The judges, both of the supreme and inferior courts, shall hold their offices, during good behaviour." Thus sir, in vain do I con over each article and section of the Constitution. I see not the smallest difference in the divisions, terms, or expressions, made use of in the establishment of these three departments. I cannot find a word or syllable which goes to establish and declare the Judiciary of the United States to be a subordinate or dependent department, and not a co-ordinate and independent branch of Government.

And as to the danger to be apprehended from an independent Judiciary; what can it be? Whence can it arise? The number of judges of the United States, must necessarily be curtailed; increase them, even as far as the imagination of any gentleman will carry him, still they cannot act effectually without the aid of the Executive and Legislature. They are besides scattered over an immense continent; never assembled together in a body; and four-fifths of them will in all human probability, remain utter strangers to each other, except by name and reputation. They neither wield the sword, nor have the purse-strings at their command. They cannot move until the other two branches have acted. They can neither say what laws are to be made, or direct what measures must be pursued. Their whole power consists in assisting to carry the laws and measures, adopted by the other two branches, into operation; in dealing out justice, protecting the weak against the strong, and restraining and checking the unconstitutional attempts of the Government. Their only shield is the Constitution; their only force, argument. They not only are without the means of acting offensively, but the very situation in which they are placed, at the moment I am speaking, shows how unequal they act, even to the defence of their Constitutional rights; and proves but too clearly the justice and truth of an observation made by one of the most eminent writers of modern times. "Of the three branches of Government," says President Montesquieu, speaking of the Executive, Legislative, and Judiciary, "the latter is, in some measure, next to nothing." By what

FEBRUARY, 1802.

Judiciary System.

H. OF R.

means indeed are the judges to obtain an undue and overweening influence? From what source are they to acquire to themselves a dangerous and preponderating control over the other two branches? They have nothing to give, no inducement of power or profits to hold out to their friends and supporters. Their age, their habits of life, decorum, every circumstance, combines to deprive them of the use of those means which lead to popularity; and popularity, in a Government like ours, is real strength. In a contest, therefore, with the other two branches, the Judiciary has nothing but the sober reason, and good sense of the community to depend upon for its support. How unequal then must be the contest? How few are the chances of defending with success their rights and Constitutional power on the part of the Judiciary! For we all know but too well, how frequently the phrenzy of the moment, the rage of the day, clouds and overwhelms the sober reason and good sense of mankind.

These few observations, Mr. Chairman, I have deemed it my duty to offer to the Committee. They have been dictated however, I will honestly and candidly confess, rather in the hope that they may serve as a justification of my conduct and vote on this awful occasion, to those who have done me the honor of sending me here, than from the most distant expectation that they could have the least effect on this floor. No, sir, all my hopes of stopping the further progress of this, in my humble opinion, unconstitutional and baneful measure through this House, have long since vanished. The bill on your table, I foresee, will pass. The dyke is broken down—the torrent must have its way—and God grant that its ravages in that fertile region through which it has to flow, may be confined within a narrow and circumscribed channel. In one point, however, I differ with those who think with me on the present question. I am perhaps of a more sanguine complexion than most of them. I do not, therefore, despair of the Republic. I have the most perfect confidence in the good sense and wisdom of the American people. I believe they are strongly impressed with the necessity of having an independent and impartial Judiciary, and will not allow myself to doubt, but that they will at no distant period restore to this branch of the Government its wonted splendor and independence, and close the wound which we are about at this time to inflict on the Constitution. Under these impressions, and in this hope, I shall patiently, though with pain and anguish (I confess) submit to the will of the majority, whatever it ultimately may be, on the subject now under consideration.

Mr. SMITH, of Vermont.—Mr. Chairman, I rise for the purpose of offering you my opinion upon the motion now under consideration. I do it with great diffidence, because I am fully apprized of the importance of the question, and am conscious it merits an investigation far beyond anything I am able to give it. My diffidence is still further increased, from the recollection that this subject has already been discussed with the most profound ability, and the most moving eloquence. Little

now can remain to be said; if, however, I should contribute in any small degree to elucidate the subject, I am satisfied, from the patience the Committee have manifested during this debate, the attempt I am about to make will be acceptable. I take it Mr. Chairman, the motion is, to strike out the first section of the bill. I presume the honorable mover made it from a conviction that the bill was inexpedient, or unconstitutional, or both. Whatever reasons he might have, it is incumbent on those who advocate the passage of the bill, to show, that the enacting this bill into a law, is both Constitutional and expedient. I shall first attend to the question relating to the constitutionality. The first point to be established under this head is, “the general power of Congress to repeal a law constituting tribunals inferior to the Supreme Court.” In the eighth section of the first article of the Constitution, the powers of Congress are enumerated; it says, the Congress shall have power to lay and collect taxes, to borrow money, to regulate commerce, to establish a uniform rule of naturalization, to coin money, to establish post offices and post roads, and among many other powers, “to constitute tribunals inferior to the Supreme Court.” The Congress shall have power. The Congress here spoken of, by way of eminence, unquestionably means, not the Senate and House of Representatives which may be composed of members first chosen under the Constitution, but every succeeding Senate and House of Representatives composed as aforesaid; as if it had said, the Congress for the time being shall have power. The words “shall have power” evidently imply, that Congress may do, or omit to do, or undo, any thing which relates to the subjects here committed to their charge, as sound discretion shall dictate, and the public good require.

If Congress will that tribunals inferior to the Supreme Court shall exist, they express that will in forms prescribed by law, and they are constituted: if they will them not to exist, the same forms are pursued, and their existence ceases. It is to be observed, that the power of Congress in relation to their inferior tribunals, is spoken of in the same general terms in which all the other subjects to which their powers extend, are mentioned. It is incumbent on gentlemen, who deny the power of Congress to pass this bill, to show us in which part of the Constitution this power is taken away. They direct us to the third article, first section, of the Constitution, where it says, “the judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour.” Words spoken or written, are to be understood as relating to a subject or subjects immediately under consideration, and not to subjects which at the time are not presented to the mind of the speaker or writer. It ought here to be noticed, that the advocates of the bill contend that these words apply to the Executive, and not to the Legislative authority. To ascertain more clearly the extent of the meaning which the framers of the Constitution meant should be affixed to this sentence, on which the gentlemen opposed to the bill so much rely, it will be particularly useful to attend to the orderly arrangement

of the subjects treated on in the Constitution: perhaps a more correct and uniform arrangement never took place in any composition. It begins by a division of the powers of Government into three departments; the Legislative, the Executive, and Judiciary. These separate departments of the Government are considered separately, under three distinct articles. The first article speaks of the Legislative power; it declares that "all Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." It first speaks of the investment of Legislative power; it then tells how the bodies who are to possess this power are to be composed; it then declares how they shall be inducted into office, or in other words, of their election, and the tenure of their offices in virtue of such election. The Senators shall be elected for six years, the Representatives for two years. It then proceeds to point out the qualifications of the electors and the elected, and some further regulations relative to the government of their own bodies respectively; and lastly speaks of their powers and duties. Here the second article is introduced: it begins with declaring, that "the Executive power shall be vested in a President of the United States of America; he shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term." It then speaks of his induction into office, or the manner of election, and the qualifications of electors and elected, and lastly points out his powers and duties. Now comes the third article, which treats of the judicial powers; it begins as before, by declaring that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." Here is introduced the clause, or sentence, on which the gentlemen opposed to the bill on your table so vehemently insist. It is in these words; "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." I am here constrained to notice, that the words "appointed by the President," are omitted in this sentence. It will probably be asked, why was it so? It is answered, on the page preceding, speaking of the powers of the President, it says, "he shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." To have repeated in this sentence the words which were to authorize the President to appoint judges, would have been more than unnecessary; it would have been tautology.

It follows, then, that the sentence of which we have been speaking should be understood thus: "the judges both of the Supreme and inferior courts shall be appointed by the President, and shall hold their offices during good behaviour." The subject which presented itself to the consideration of the framers of the Constitution, evidenced by the words themselves, and the analogy which the article bears to both the preceding arti-

cles, was, first, the power of the President to appoint the judges; second, the tenure of their offices in relation to such appointment. This clause in the Constitution establishes, in the first place, that the President shall appoint the judge, and not the Legislature, which otherwise might have been doubtful; secondly, the judges should hold their offices, not at the will of the President, nor for any limited period, at the expiration of which the President might again exercise his will upon the tenure of their offices; but it should, after the appointment is made, be held independent of any exercise of his will thereafter. It should be during good behaviour. Every appointment of the Executive for an indefinite period, is an appointment at will. The nature of the power implies it. A power to be exercised at will, without any limitation upon it, must at all times necessarily depend upon the exercise of that will. There can be no necessity for a chain of reasoning upon this point. It has been the universal practice of this Government, and I believe of every other, when the Executive has had the power of appointments, that a person receiving an appointment, where neither the Constitution or laws have defined the period for which he is to hold it, it is considered as held at the will of the Executive. In the Government from which we derive much of our knowledge of jurisprudence, it had long been deemed an evil that the judges held their offices at the pleasure of the Crown. This tenure has finally been changed into a tenure for good behaviour, defeasible, however, upon the application of both Houses of Parliament. The framers of our Constitution most unquestionably saw good and sufficient reasons for giving the same independence to our judges, and the words which they have introduced into the Constitution for this purpose, are strictly applicable to that subject; not a word could be added or taken away, without injury to their meaning. It should seem, then, that the judges are independent of Executive will, subject, however, to the ordinary power of the Legislature, in constituting, altering, and modifying the courts, in such manner as, in their opinion, the public interest may require. If this clause of the Constitution, about which so much has been said, was not intended by the framers of the Constitution to be understood in subordination to Legislative power, and exclusive of it, they should have inserted some words which would plainly inhibit Congress from altering or modifying the courts; they ought to have said, not only they shall hold their offices, but their offices shall not be abolished during good behaviour; their offices are the work of the Legislature, they have their existence in Legislative will; the power of the President to appoint, and the tenure of their offices in virtue of that appointment, are all suspended on the existing pleasure of Congress, expressed in your law; if that is withdrawn, the whole fabric tumbles into ruin. Gentlemen have said much about the co-ordinate powers of the Government, and that the Executive and Judiciary are co-ordinate with the Legislature. So far as they have a Constitutional existence, independent of Legis-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

lative will, they are so, but when their existence or power depends on the exercise of that will, they are dependent. This is one of those cases; gentlemen are endeavoring to take from the Legislature their power, by inference and implication. They reason thus: "the judges shall hold their offices during good behaviour." If you repeal the law, they cannot hold their offices; therefore you cannot repeal the law. Will not this reasoning apply to every law constituting an office held at the will of the President? Your supervisors hold their offices at the will of the President; if you repeal the law constituting these officers, you determine the President's will, and deprive them of their offices; therefore you cannot repeal the law.

"The President shall be Commander-in-Chief of the Army." If you repeal the law organizing an army, he will not be the Commander-in-Chief; therefore you cannot repeal the law organizing the army, and so on of the navy and militia. The only explanation which can be given for this apparent contradiction and absurdity is, it must be understood in subordination to, and exclusive of, Legislative power. Should doubts still remain about the application of these words in the Constitution, it appears to me the rule for construing statutes would be sufficient for our purpose. When a statute is passed granting general powers, and there is a proviso introduced limiting those general powers, and a proviso within the proviso, with expressions broad enough to affect many of the general powers in the body of the statute, the rule is, the last proviso shall be confined to the providing clause, and not extend to the body of the statute. Now, apply this rule to the nature of Government and of the Constitution. The Legislative is the primary and original power; it comprehends in it all Executive and Judicative powers. That authority which can make laws (when no restrictions are expressly imposed) can cause those laws to be executed; for, what would be the authority of a lawgiver if he did not possess the means of enforcing obedience? In ancient times, and in many countries at present, where the science of Government is very imperfectly understood, the Executive are the mere creatures of the lawgiver, and wholly dependent on his will; but as advances have been made in the science of Government, the propriety of dividing the power of Government, and giving the Executive independence to a certain extent, has been confirmed. The Executive, also, charged with the execution and application of the laws to these various objects, both *civiliter et criminaliter*, found it expedient to call to his aid judges who might inform the Executive who were objects of animadversion and remuneration. These judges, at first, were the mere creatures of Executive will; this will was a long time severely and oppressively felt in the British Government; they have now obtained a very high degree of independence of the Executive. This view of the progress of Government gives us to understand that Executive authority is nothing more or less than a reservation and limitation from Legisla-

tive authority; and in the same manner the Judicial authority is a limitation and reservation from Executive authority. Apply these rules for construing statutes to the Constitution and the three branches of your Government. The Executive authority being a reservation of authority out of the general powers of the Legislature, when applied to them, is to be construed strictly, and to take nothing by implication. The Judicial power, also growing out of the Executive, and reserved from it every enlargement of right or power in behalf of the Judiciary, is to be taken as applicable to the Executive and not the Legislature, excepting when they are expressly pointed out.

Mr. Chairman, the reasons which I have already offered to the Committee, have induced me to believe the Constitution, when it says, "the judges shall hold their offices during good behaviour," did not intend to deprive the Legislature of their ordinary power to constitute tribunals inferior to the Supreme Court, or abolish or modify, from time to time, as in their opinion the public good, and the due administration of judicial justice might require. If, however, in the estimation of gentlemen, the construction which I have attempted to give the Constitution, is inadmissible, I ask of gentlemen to reflect on the absurdities which grow out of their construction, and the absolute inefficiency of this instrument, to produce the result for which they contend? Gentlemen say, the Constitution authorizes the judges to decide your laws unconstitutional, and they are to hold their offices independent of the Legislature, to give greater efficiency to this salutary check. I beg leave to inform gentlemen, the Constitution has established no such principle. It is true your judges have authority, derived from the nature of their power as judges, to decide in this way; but the clause which the gentleman speaks of has nothing to do with this question. Whether the judge holds his office at the will of the President, or for one year, or during good behaviour, it is equally his duty to decide a law void, which directly infringes the Constitution. When there is a constitution of government, this principle is inseparably united with the judiciary authority; but prudent judges will exercise this right with great caution, knowing the Legislature has an equal right to put constructions; they will also consider the Legislature are obliged to precede them in their construction. The evil resulting from a difference in opinion cannot escape them. Hence it has been said, that the judges, in deciding the question on the carriage tax, observed they never would exercise this right, unless this law and the Constitution were absolutely irreconcilable. It might as well be said, this was an evil inseparable from judicial authority, as to call it a salutary principle of the Constitution. Why is it thought that the barriers which the Constitution has opposed to the passage of hasty, inconsiderate laws, are not sufficiently multiplied? Here is a House of Representatives composed of about one hundred members, coming from every part, and representing every interest in the United States; on every law which passes this House, the different interests and feelings of its members are

rallied to guard the passage. The other branch is composed of members differing in number, in years, and the interests they represent. All calculated to impose a restraint on such interests and passions which, from any circumstance, might have found way for a bill through this body. It is finally to be presented to the President, who represents the entire interest of the people of the United States; and is accountable to them by an election every fourth year; if he dissents, it must be re-enacted by two thirds of both Houses. What further checks can be wanting? There is a point of precaution, beyond which it would not be salutary to go. If the framers of the Constitution contemplated your judges as the great safeguards against the encroachments of the Legislature in passing unconstitutional laws, I ask, how does it happen that the Constitution does not provide, that every bill, previous to its becoming a law, should be laid before the judges of the Supreme Court, for them to decide on its constitutionality? The evils which result from a postponement of this decision until the law has gone into operation, are too obvious to have escaped their notice. A law which concerns the life, the liberty, and property of the citizen, may be many years in operation, before any decision had, and then called up collaterally perhaps in the case of an individual, in which it will have little effect upon its general operation. Instead of placing the judges where they might have rejected the cause which some gentlemen seem to think likely to produce unconstitutional laws, they are left to maintain a perpetual, but ineffectual combat, against the effects of such laws. This view of the subject convinces me the framers of the Constitution never deemed the check of which the gentlemen speak of any importance.

It has also been said, this part of the Constitution was intended to guard against the assumption of judicial powers by the Legislature. That part of the Constitution which declares, that "the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish," is the Constitutional safeguard, in this respect. Congress not only can have no pretensions for assuming and exercising Judicial powers, but the manner in which they are organized utterly forbids it. Congress, sitting as a court of judicature, would immediately become contemptible; nor will history, since the separation of the Judicial from the other powers of the Government, furnish a single instance of an assumption by the Legislature. If such tendency could possibly exist, this holding of offices, as gentlemen insist, would furnish the best possible pretext for an encroachment. A violent assumption of all Judicial power, at once, would be thought too daring; the attack must be insidious; your courts are badly constituted; the tenure of their offices stands opposed to a reform; you must wait until death or misbehaviour remove them. This gradual extinction of your courts calls for the substitution of other tribunals in their place. Congress, during the progress of their extinguishment, assumes to itself the exercise of such Judi-

cial powers as the courts become incapable of exercising, until a convenient and Constitutional opportunity presents, of constituting a judicial system, which shall better answer the purposes intended by it. The plea of necessity is powerful; the ambitious and assuming rarely neglect to improve it. An opportunity is also afforded disappointed legislators of securing for themselves and friends a safe retreat. Here, by the power of the Executive, is to be found an ample reward for the loss of popularity.

Mr. Chairman, gentlemen say, their construction of the Constitution alone will give firmness to the judges in checking the unconstitutional acts of the Legislature. Can they entertain an opinion of their judges so unfavorable? Will the judges, under an apprehension of removal from office by the Legislature, under the pretext of a law for the better and more perfect organization of courts, give up all their independence of opinion? Will they forget their oaths? Will they forget everything which constitutes the excellency of a judge, for the paltry consideration of a salary, which, gentlemen say, is no more than adequate to their services? Your judges are, or ought to be, the first in talents and information; they must have experienced, as the gentlemen observed, the *viginta annorum lucubraciones*; they cannot, therefore, become the mere dependants on public favor. If the Government has no further employment for them, their talents will secure for them a private employment equally lucrative. This retreat will neither injure their property or hazard their reputation. I should have thought, if the dependence of the judges were to give the alarm, the power of impeachment vested in this House must have occasioned it. It is in vain we talk of independence of judges, whilst the rod of chastisement hangs over them. Let us suppose a law in which this struggle between the Legislature and courts is most likely to be put to the test. In some great national emergency the Legislature pass a law which, in their opinion, is highly promotive of the public good; the safety of the country, in the opinion of the Legislature, depends on its execution; your judges paralyze the operations of Government by deciding that law unconstitutional. Here is a collision of opinion destructive in its nature, and for which a remedy must be devised. The Legislature have decided it compatible with the Constitution; your judges the reverse; here is an impeachable fact; an impeachment is ordered. Gentlemen will say, the safety of the judges is in the purity of their intentions; I answer, I have seen with what facility gentlemen can impeach motives; I have seen it here; I have seen it in solemn trials at the bar. It is this uncharitable spirit which has deluged the world with blood; which, from the Christian era, and before, has swept from the earth a great portion of its inhabitants. We cannot easily discern how the same truths, presented to different minds, should appear different, especially after we have shown to such minds the connexion of truth, as it exists in our own. We look for other causes, we ascribe it to that corruption of heart which we

FEBRUARY, 1802.

Judiciary System.

H. OF R.

know, upon so many occasions, perverts the understanding. But, granting a conviction is not produced, and they escape with impunity, where will they find thereafter that delicacy of character which is essential, so absolutely necessary, to men of their pre-eminence? They are, at best, either left without a character, or forced and driven from political life with infamy and disgrace. Mr. Chairman, there are Constitutional modes in which obnoxious judges are exposed to be assailed by the Legislature. It is said, you cannot abolish the office of a judge, yet, you are at liberty to vary the duties of the office. It is said, you must leave enough of the duties to preserve the office. Gentlemen have not clearly pointed out the distinction between office and the duties belonging to it. That the duties of the office of a judge may be varied or taken away, to a certain extent, has been denied by no one. The gentleman from Delaware has attempted to fix the right of the Legislature in passing on this subject, upon the *bona fide* intention with which they act. You may legislate about the jurisdiction of courts, both civil and criminal; you may alter the jurisdiction of a court, or transfer the jurisdiction to another court, or give it to a court newly constituted; but this must be done with an upright intention, not to destroy the office. Where there is no other limitation to our power but the purity of intention with which we act, the necessary inference is, that there is no Constitutional barrier in the way, provided a majority are of opinion the measure is expedient. The Legislature has too frequently varied the jurisdiction and duties of their courts to admit any dispute on that point. They must show us the true line of distinction between the office of a judge and the duties belonging to it, that, while we do our duty in relation to one, we need not overleap the bounds of the Constitution in relation to the other.

The truth is, and I am ready to admit it, the officer, the office, and the duties of the office, are separate distinct things. An office may be thus defined: "A place created by the Legislature, for the purpose of having some person placed therein to discharge such duties as may be assigned to it; the place created is the office; the person placed in it is the officer, and the duties of the office, the services to be performed, be they more or less." Suppose your public debt all discharged, would the loan offices established in the different States for the purpose of aiding the discharge of that debt, necessarily be abolished? I take it not. The duties of an office are the reasons which induce the Legislature to create the officer, not the office itself. Congress are the sole judges of the quantum of duties necessary to justify them in creating an office, and when the office is created, it remains, let the amount of service assigned to it be ever so small, until abolished by the power creating it. Should any of your courts render themselves obnoxious to Congress by deciding their laws unconstitutional, what is to be done? Take from them all their jurisdiction, both civil and criminal, and transfer it to other courts, who will decide more in unison with your

own opinion. By this measure you remove every obstacle which the judges, by declaring your laws unconstitutional, might throw in your way. Will it be said, if the office and salary remain, Congress will never take from the courts their jurisdiction? If it should become an object of magnitude, they certainly would. Wherever Congress have the power to act, and the doing of that act would, in the opinion of Congress, be promotive of the public interest, that power is immediately converted into duty, and the obligation resting on them to do the thing is indispensable. How, I ask then, is this construction which gentlemen contend for, to end? In some embarrassment of the Legislature, but no possible advantage to the public. It terminates in a mere personal advantage to the judges; they hold their offices to preserve their salaries. Will this be thought a wise and national provision? The office was created because there were duties to assign to it, and the salary was given for the discharge of those services. Congress have seen cause, in a Constitutional mode, to dispense with those services. I ask, then, ought not the office to be abolished, and the salary given up? The maxim is, all compensations given to the public agents of every description, are upon the principle of rendition of services, and not as sinecures. In this view of the subject, will Congress conceive it their duty to appropriate money for the payment of their salaries? Will gentlemen, the friends of those judges, ask it? Will the judges themselves receive it? I cannot say what the feeling of others may be; but for myself, at the stretching forth my hand for such purpose, the suffusion of shame would redder in my face. I should blush from a consciousness of guilt.

Mr. Chairman, I shall say a few words in answer to some observations advanced by the gentleman from Delaware. He said we could not do that indirectly which we could not do directly. Meaning, I suppose, since we could not remove the judges from their offices without abolishing them, we could not abolish their office, and thereby do it. This proposition is so far from being true, that the converse of it is nearer true. We cannot make a single appointment to office; but we can create offices by which it becomes indispensably necessary for others to do it. We cannot directly take from the inhabitants of this city a shilling's worth of property, but indirectly, by the removal of the seat of Government, we can take from them one-half they possess. We can create and abolish offices, because we have duties assigned to us in relation to them, and we are responsible to the community for the faithful discharge of those duties; but in relation to appointments we have no duties, we have no responsibility. The gentleman last mentioned, in answer to an observation which had been advanced by some gentleman opposed to him, that the power to pass a law necessarily implied a power to repeal it, showed us two instances in which that right did not exist. First, where the right to repeal the law was expressly taken away, as in the case of diminishing a judge's salary; this right was never contended for. The second instance was, where the

H. OF R.

Judiciary System.

FEBRUARY, 1802.

law was in the nature of a contract; no one ever supposed a contract could be repealed. The gentleman was candid enough to inform us at the time, that he did not pretend it applied to the case under consideration. Lastly, he urged very strenuously the British statute, which provides that the King, upon the application of both Houses of Parliament, should have power to remove the judges; and also the constitutions of two of the States, nearly to the same effect. From the insertion of the provision in the British statute, and in the constitutions of the two States respectively, we insisted it was a fair inference, that no such power previously existed. It is true no such power did previously exist. The inserting this proviso in the act of Parliament, and the State constitutions before mentioned, enabled the Parliament and Legislatures of the two States respectively, to operate on the persons of their judges, to remove them from office; an operation wholly unwarrantable without such provisions.

Mr. Chairman, I shall take the liberty to say a few words upon the episode of this debate, the eulogy of the late Administration. Gentlemen say the affairs of the Government, by them intrusted with its management, have been conducted with the greatest wisdom and purest intentions. I am not disposed to arraign motives. I am inclined to give full credit on that score. It has been said in justification, that the expensive measures into which we have been led by the Government, arose not from any causes reprehensible in the Government, but from causes imputable to others, from circumstances and events not indeed excusable in those who produced them; but on the side of your Government uncontrollable, irresistible.

All our troubles, external and internal, from the commencement of the Government to the present time, are said to be of this description. They ask, and appeal for the decision, whence your Indian war? On the part of your Government, say they, was displayed wisdom, prudence, moderation, and conciliation, towards those hostile tribes. There was an allowance for the ignorance, the prejudices, and the weaknesses of a savage people. A disposition to enlighten, persuade, and inspire those barbarian nations with a sincere confidence and belief in the friendship of the United States. But on the opposite side was displayed a spirit implacable, revengeful, blood-thirsty; a disposition to imbrue their hands in the blood of your children; a spirit which nothing but the most lively apprehension for their own safety could extinguish. It is inquired also, from whence arose your Western insurrections? Did they proceed, say gentlemen, from your Government's deprecating this principle, that the understanding as well as the will of the people should bow to the laws? Were not the singular and formidable appearances arising out of a new Government sufficiently explained? A second Government, bringing with it a debt of eighty millions of dollars, a heavy impost, and a demand for further contributions in a way of all others the most detestable to the people. Is there not a manifest distinction to be taken between a heavy and insupportable burden of

taxes, when demanded by a foreign Government, and when levied by your own? Is an explanation to the people of the justice and propriety of your laws to be expected from your Government, or is it sufficient that they cause them to feel submission to them? Your people stand in need of Government, and the rulers do right in seeking occasions to exercise it, so long as they discover an indisposition to submit. The constituted authorities of a country should never cease governing until there is manifested on the part of the people a disposition to acquiesce in laws in which they can discover no traces either of utility or justice: your Government stands justified. But on the part of the insurgents was evidenced a spirit hostile to all Governmental authority; a spirit opposed to every species of subordination; a Jacobinical spirit, a disposition which originates from an aversion to all authority, government, and subordination; a savage dissocial spirit, which fattens on its own sinister views and purposes, but pines on the prosperity of others. Gentlemen speak also of the misunderstanding with the French Republic, and of the evils and troubles dependent thereon. On the part of your Government, say they, was entertained a high sense of gratitude for the great and essential services rendered by that nation during a long, distressing, bloody Revolutionary war, in which we had lately been engaged. Their present circumstances excited compassion. A great, a generous nation, struggling for the blessing and sunshine of liberty, opposed by internal dissensions, and resisted by every earthly power. At a time when despair began to brood on the countenance, and they were sinking under the monstrous pressure of external and internal force, assistance and favors were asked of your Government by their Minister, which he declared was not intended to exceed, on our part, the strict position of a neutral situation. They were refused, it is true, but in a manner so pleasant and agreeable, it ought not to have given offence. Their pressing and urgent solicitations were continued until the American Government were compelled to refuse the civility of an answer. Offended at this necessary and justifiable conduct of your Government, their Minister withdrew, and what followed? They discovered, by a treaty presently made with a belligerent nation, you had violated your neutrality by authorizing the capture and condemnation of French property on board of American vessels, and by permitting American vessels, bound to French ports with provisions, to be delivered, upon paying a reasonable mercantile profit. They, therefore, under a sentence to be found in your treaty with them, placing them upon the footing of the most favored nation, authorized the capture of British property found on board American vessels. It is said they are an aspiring ambitious nation; their rulers thirst for domination; there is no medium between resistance and unconditional submission. I have no disposition, on the present occasion, of entering into a minute investigation of the merits of this controversy. An attempt of that sort would prove ineffectual. All the minutiae of circumstances necessary to

FEBRUARY, 1802.

Judiciary System.

H. OF R.

form a correct opinion, cannot, at this late period of time, be brought up. These circumstances and events have all passed in review before the people of the United States; their judgment has been made up; they have rendered judgment, and the judgment is against those gentlemen to whom we stand opposed. They should acquiesce; they should not argue after judgment.

Mr. Chairman, in relation to the expediency of this measure, gentlemen should consider we have the most expensive Government on earth. It may be denominated *imperium in imperio*; doubly harassed with Legislative, Executive, and Judicial officers. A Government so complicated and expensive ought to be administered with economy. We should reflect, the bane of all Governments has been the extravagance of their expenses. Government is instituted for the protection of property; but when the expense of protection nearly equals the amount protected, it defeats its own end. By the document on your table relating to these courts, it appears, that, in a period of ten years, there has been depending therein upwards of eight thousand suits, which will fall short of one thousand a year. The yearly salaries of the judges exceed thirty thousand dollars. This expense, averaged upon the suits, exceeds thirty dollars in each suit, simply for the salaries of the judges alone. If other expenses of suits are proportioned, the bill of cost must be enormous. Compare this expense with the expense of State courts. In the State in which I live, the county courts are the courts of entry for civil actions or suits; the compensation of the judges is paid by the suitors. Their whole compensation, when averaged on the suits, does not exceed a dollar and a third of a dollar to each. The disproportion of expense then, by this calculation, is more than twenty to one. I am of opinion the number of suits in the circuit courts of the United States will be less for ten years to come, than they have been for ten years past. Several causes have existed which served to increase the number of causes for the period which is past. The troubles in Europe, and the embarrassed situation of our commerce for the most of that period, has greatly increased our maritime suits, both civil and criminal. The probability, and almost certainty of the relinquishment of all your internal taxes is another cause which will tend to a further decrease. That spirit of speculation which was created and put in operation by funding the public debt, and other measures of the Government, since it commenced its operation, has been a fruitful source of litigation in these courts. None of the beforementioned causes, it is hoped, will hereafter exist, particularly for a considerable period of time. My reasons, however, for the expediency of this measure, are not grounded on a calculation of expense. I have no idea that the circuit courts of the United States ought entirely to be done away. My opinion is, the present judges of these courts are supernumerary. You may preserve the circuits of the United States as they now are, viz: six. You may associate one of the judges of the Supreme Court with the three district judges residing in each of

these circuits. Let these judges constitute the circuit court in their respective circuits. In trials at law uniformity of decision is said to be the great desideratum. In effecting this end, we are to look to the influence your Supreme Court will have over the other tribunals. This court, as was beautifully expressed by the gentleman from Delaware, is the conscience which is to actuate all the subordinate courts. But how is this conscience to operate under the present system? There is no personal connexion between these courts. The few solitary suits which may be brought up by appeal to the Supreme Court, will have but little influence, and even these present themselves in so new and doubtful a shape, that very little is to be understood about the justice or legality of the judgment in the court below. Upon the plan which I propose, one of the judges of the Supreme Court will be present in your circuit courts, by means of which an opportunity will be afforded him of infusing into every part of a trial, that superior legal knowledge which he may possess. Your district judges will also profit from this connexion. It will be a source from which they will derive much legal knowledge and improvement; and it will show itself in the trial which may be had in their respective districts. No means can be derived to give the judges of your Supreme Court so correct and so universal influence over judges of subordinate tribunals. I am also persuaded that all the business which belongs to the courts of the United States, can conveniently be done by associating the supreme judges and the district judges, in the manner proposed. If so, the present judges of your circuit courts are supernumerary, and their salaries are, as it relates to the public, thrown away. The gentleman from Delaware has indeed suggested, the judge of the Supreme Court who may have presided in a trial below, when the same is removed into the Supreme Court, may set himself to intrigue, and condescend to low arts and management, to gain over the other judges to the support of his opinion. This is too improbable to merit a serious refutation. It is the pride of a judge, particularly in a station so exalted, to hold himself at all times open to conviction, and nothing gives him greater pleasure than to have it in his power to correct an error, which he may discover in a former opinion. For these reasons, Mr. Chairman, I am against striking out the first section of the bill.

Mr. MACON.—As no other member at present seems disposed to take the floor, I will ask the attention of the Committee for a few minutes. I have attended with the greatest patience and diligence to the arguments of gentlemen who oppose the bill as unconstitutional; and had they produced a single doubt in my mind on the point of constitutionality, I should most certainly have voted with them against the bill on your table; but I can with truth say, I have not heard any argument which has in the least changed my first conviction, that we have a Constitutional right to pass it.

I should not, I believe, have spoken on this question, had not my colleagues, who differ with me in

opinion, thought proper to bring into view a vote of the Legislature of the State, instructing her Senators and recommending it to the Representatives to use their best endeavors to obtain a repeal of the last Judiciary act. On this resolution of the State Legislature, they made some extraordinary remarks, which I mean to notice; but first permit me to inform the Committee, that it has been the constant practice of the Legislature of that State, from the commencement of the General Government to the present day, to instruct her Senators, and to recommend to her Representatives, to pursue such measures on all the great national questions that have occurred, as the Legislature judged the interest of the State required, and this proceeding has never been considered improper. I shall endeavor to answer the gentlemen in the order they spoke, beginning with my colleague (Mr. HENDERSON) who was first on the floor. If I understood him rightly, (and if I do not he will correct me, because it is not my desire to misstate a single word,) he said that the Legislature of the State might have adopted the resolutions in consequence of the Message of the President; but, upon examination of the dates, this will be found to be impossible. The Message could not have reached the Legislature before the question on the resolutions was taken and decided; and on no important question was that body ever more unanimous; and though my colleague has said the question was there viewed but on one side, and decided in a manner *ex parte*, yet I will be bold to say, if there were any member in that Legislature who thought on this subject as he does, he enjoyed the same right there that my colleague does here, to deliver his sentiments.

Knowing as I do, the great talents and integrity of my colleague, and I believe no one on this floor knows them better, I was surprised when he charged others with being under the influence of passion, when his conduct must convince them that he was guided by the very passion which he attributed to others. He quoted the constitution of North Carolina; let us examine it, and see whether his argument can be aided by the practice under that instrument. The thirteenth article is in the following words; that "the General Assembly shall, by joint ballot of both Houses, appoint judges of the supreme court of law and of equity, judges of admiralty, and attorney general, who shall be commissioned by the Governor, and hold their offices during good behaviour." On this clause he noted the independence of the State Judiciary; and they are independent so long as the law creating their office is in force, and no longer; and it is worthy of notice, that in this section no mention is made of salary, and yet the judges have been considered as independent as the judges of the United States. Soon after the adoption of the Constitution, the Legislature of the State established courts in conformity thereto; first county courts, and then superior, and afterwards, by a Legislative act, without electing a single new judge, gave the superior courts the additional jurisdiction of a court of equity, and never a solitary complaint, that this law was unconsti-

tutional; and it must be acknowledged, that if you can make a court of law also a court of equity, by a Legislative act, you can by the same power take it away; and what becomes, in this case, of the commission which is to be held during good behaviour? It is, according to my construction, to last no longer than the law which created the office remains in force, and this is long enough to make the judges independent. As to the salary of the judges of North Carolina, the twenty-first section of the Constitution says, "they shall have adequate salaries during their continuance in office," and yet with this clear right in the Legislature, to lessen as well as to add to their salaries, the judges, it is agreed, are independent. My colleague well knows, that many attempts have been made to deprive the superior courts of exercising any jurisdiction in cases of equity; and he also knows, that attempts have been made to establish a court of appeals, which should revise the decisions of the superior courts now in being; and by the constitution of the State any supreme court may, on presentment of a grand jury, try the Governor for mal-administration, &c., and I believe the present courts are authorized to do this. I have not at this place been able to see the act which gives this authority, but no doubt is entertained of the fact.

It is clear then, that in North Carolina, all parties have thought, that "during good behaviour," only meant so long as the office existed; because, by establishing a court of appeals, the judges now in being would not be supreme judges, and in all these various attempts no one ever charged either of them to be unconstitutional. On examination of the constitution of North Carolina, it will be found that it makes provision for the appointment of other officers by the Legislature, but says nothing about adequate compensation, except in the section last read, and if you take the office away, what is an adequate compensation for doing nothing? Another proof might be drawn from the constitution of North Carolina, in favor of the opinion I hold, which is taken from the twenty-ninth section, that "no judge of a Supreme Court shall have a seat in the General Assembly," and my colleague knows, that the present judges could not hold a seat there, because they are supreme judges. And he also knows, that no one ever doubted the Constitutional right of the Legislature to establish the courts before mentioned; and it seems to me this, on his construction, would be a violation of the Constitution, because, having once made a Supreme Court, it must always remain so, to secure, what he calls, the independence of the judges.

Sir, I was astonished when my colleague said, that the judges should hold their offices, whether useful or not, and that their independence was necessary, as he emphatically said, to protect the people against their worst enemies, themselves; their usefulness is the only true test of their necessity, and if there is no use for them, they ought not to be continued. I will here ask my colleague whether, since the year 1783, he has heard of any disorder in the State we represent, or whether

FEBRUARY, 1802.

Judiciary System.

H. OF R.

any act has been done there which can warrant or justify such an opinion, that "it is necessary to have judges to protect the people from their worst enemies, themselves." I had thought we, the people, formed this Government, and might be trusted with it. My colleague never could have uttered this sentence, had he not been governed by that passion which he supposes govern others. It is true that we are not a rich and wealthy State, but it is equally true, that there is no State in the Union more attached to order and law; and my colleague himself would not say that it was necessary to have judges for this purpose in the country we represent; the people there behave decently without having Federal judges or standing armies to protect them against themselves. Is it not strange, that the people should have sense enough to pay their taxes without being driven to it by superior force, and not have sense enough to take care of themselves without this new Judiciary? They certainly contrived to do this before the act establishing this Judiciary passed.

Another expression of his equally astonished me; he said, that on the 7th day of December, a spirit which had spread discord and destruction in other countries, made its entry into this House. What! are we to be told, because at the last election the people thought proper to change some of their representatives, and to put out some of those who had heretofore been in power, and to put others in power of different opinions, that a destroying spirit entered into all the public functionaries? For what, sir, are elections held, if it be not that the people should change their representatives when they do not like them? And are we to be told from the house-tops, that the only use of elections is to promote, not public good, but public mischief? We are also told, that this Constitution was to be destroyed by the all-devouring energies of its enemies. Who are its enemies? We are not, nor do I think there are any in this House; but there are parties as well in this House as out of doors, and no man wishes more sincerely than I do that they were amalgamated, that we might get rid of all party gall, and free ourselves from improper reflections hereafter. But by what energy is the Constitution to be destroyed? The only energy heretofore used, and which made the change so much complained of, was the energy of election. Sir, I scarcely know what to say when I hear such uncommon sentiments uttered from a head so correct and a heart so pure; it is the effect of a passion of which he is unconscious. Again he says, if you repeal this law, the rich will oppress the poor. Nothing but too much law can anywhere put it in the power of the rich to oppress the poor. Suppose you had no law at all, could the rich oppress the poor? Could they get six, eight or ten per cent. for money from the poor without law? If you destroy all law and Government, can the few oppress the many, or will the many oppress the few? But the passing the bill will neither put it in the power of the rich to oppress the poor, nor the poor to oppress the rich. There will then be law enough in the country to prevent the one from oppressing the other. But

while the elective principle remains free, no great danger of lasting oppression can be really apprehended; as long as this continues the people will know who to trust.

He has also brought into view the repeal of the internal taxes, and the naturalization law, and these are some of the measures which this destructive spirit approves; and will they oppress the poor; will the repeal of taxes oppress the poor, or will it oppress anybody? If it will, the people will cry out with the gentleman from Virginia, (Mr. RANDOLPH,) give us more oppression. You cannot give us too much of this kind of oppression, provided you pay our debts and protect us at home and abroad. One word respecting the naturalization law—observe the danger apprehended by North Carolina on this head; the fortieth section of her constitution is in the following words: "That every foreigner who comes to settle in this State, having first taken an oath of allegiance to the same, may purchase, or by other just means, acquire, hold, and transfer land or other real estate, and after one year's residence shall be deemed a free citizen." After this, can we believe that the people of that State have any fear of the few aliens that may wish to settle among them?

It is asked, will you abolish the Mint, that splendid attribute of sovereignty? Yes, sir, I would abolish the Mint, that splendid attribute of sovereignty, because it is only a splendid attribute of sovereignty, and nothing else; it is one of those splendid establishments which takes money from our pockets, without being of any use to us. In the State we represent, I do not believe there are as many cents in circulation as there are counties. This splendid attribute of sovereignty has not made money more plenty; it has only made more places for spending money.

My colleague next said, what I sincerely wish he had not said, that if you pass the bill, he would neither shed a tear nor heave a sigh over the Constitution. If we pass the bill, and the people should think we did wrong in so doing, nay, that it violates the Constitution in their opinion, have they not the power to bring it back to its original stamina, by a peaceable corrective, which they can exercise every two years at the elections? Suppose this done, would not the Constitution then be worth something, even in his estimation? Would it not be better to cherish this expectation than to destroy the Constitution, and put everything afloat? Would not this be much better than confusion, anarchy, and the sword of brother drawn against brother? As to myself, I confide in the people, firmly believing they are able to take care of themselves, without the aid or protection of any set of men paid by them to defend them from their worst enemies, themselves.

Permit me here, sir, to advert to the resolutions of North Carolina. [Mr. MAÇON here read them.] In commenting upon these resolutions, my colleague certainly used very complaisant language towards the Legislature of that State; but it seemed to me that he gave them a back-handed compliment when he said they passed these resolu-

tions without a fair hearing. But, sir, is there anything indecent in them? Have they expressed a sentiment which they had not a perfect right to express? They wish the law repealed, because they believe the old system adequate. They wish the law repealed, because it produces a useless expense. This, perhaps, they more sensibly felt from being in the habit of conducting their public affairs with the greatest economy; and, finally, they wish the law repealed, because it is an useless extension of Executive patronage; and they at the same time declare that they have due confidence in the Chief Magistrate of the Union. Yet they do not wish offices continued merely that persons may be appointed to fill them. I perfectly agree with them in every particular.

We have heard much about the judges, and the necessity of their independence. I will state one fact, to show that they have power as well as independence. Soon after the establishment of the Federal courts, they issued a writ—not being a professional man I shall not undertake to give its name—to the Supreme court of North Carolina, directing a case then depending in the State court to be brought into the Federal court. The State judges refused to obey the summons, and laid the whole proceedings before the Legislature, who approved their conduct, and, as well as I remember, unanimously; and this in that day was not called disorganizing.

As so much has been said about the resolutions of North Carolina, I will repeat again, that it is no uncommon thing for the Legislature to express their opinion on great national subjects, and will ask my colleagues whether they ever heard any complaint of the resolutions about the Western land? And whether none of them in the Legislature never voted for the resolutions about the Western land, nor about post offices and post roads? The Legislature surely had as much right to give an opinion as the Chamber of Commerce of New York; but, put it upon what footing you please, it is entitled to respect, as the uninfluenced opinion of so many respectable individuals; and the Legislature never intended nor wished that the recommendation to the representatives should be binding on them at all events; and if I believed the bill to be unconstitutional, I should not vote for it, but as I do not, I hope the gentleman will pardon me for pursuing my own sentiments, and voting for it. I hope no man will ascribe to me a disposition to produce anarchy in my native country. Although poor myself, I feel as strong a desire as any one on this floor for the preservation of good order and good government.

It has been asked, by the gentleman from Delaware, (Mr. BAYARD,) will the gentleman from Virginia (Mr. GILES) say, the assuming the State debts was improper? I have no hesitation to say that it was done at an improper time; and, in showing that it was, I hope I shall be pardoned for travelling over topics that really have nothing to do with the merits of the present question. That act is now done, and, by what I say, it is not to be understood that I wish Congress should put their hands upon it. It will be noticed that Congress

are authorized to establish post offices and post roads for the general and equal dissemination of information throughout the United States; and is it not known that no act was passed on that subject before the assumption of the State debts, and that there was only one post road which run near the seacoast? Of course, the people in the interior country had no communication with those in the Government, nor had they any knowledge of what was doing. But the rich speculator, who was on the spot, by going into the country where the people were ignorant of what had been done, purchased up their certificates—the only reward they had received for their toil and wounds—at about one-tenth of their value. And it is possible that many of these purchases may have been made with public money. And it is clear to me, that if a proper number of post roads had been established, before the act was passed for assuming the State debts, the war-worn soldier would not have lost half as much as he did by the speculation on his certificates.

The gentleman from Delaware says we drove them to the direct tax. This is the first time I ever heard of a minority driving a majority. Is such a thing possible? Did we drive them to the measures that made such immense expenditures of the public money necessary? No, sir, we opposed those measures as useless; and the true ground of the direct tax is this: the public money was expended; public credit was stretched, until, to preserve it, it became necessary to provide for paying, and the means adopted were the direct tax.

The same gentleman tells us there is nothing sacred in the eyes of infidels. We know our opponents. The allusion here is too plain not to be understood; and evidently is, that those who differ with him in opinion are infidels. This is a strong expression; it would have seemed that his love of Americans ought to have prevented the use of it. I shall make no answer to it, except to remind him that in a book, the truth of which he will not deny, he will find these words, "*Judge not, lest ye be judged.*" He also said that gentlemen might look to the Executive for victims, and not to the judges. Notwithstanding this remark, and without condemning or approving the appointments made by the late President, I hope I may be permitted to express my own ideas, without being considered as under the influence of the present President. Prior to the fourth of last March, all, or nearly all, the offices in the gift of the Executive were in the hands of men of one political opinion. On that day the people changed the President, because they did not like measures that had been pursued. But, to those who have attended to the debates in this House, it must appear strange, indeed, to hear gentlemen complain of the President having in office those who agree with him in opinion, when we were formerly told that the President would do wrong if he appointed to office those who differed from him in political opinion; and whenever he had done it, he had had cause to repent of it. Was that opinion then correct, and now false, in the estimation of gentlemen? For my part, I did not think the opinion correct when I first heard it,

FEBRUARY, 1802.

Judiciary System.

H. OF R.

nor have I since been convinced of its propriety. Indeed, before I can think so, I must have a worse opinion of human nature than I now have, and think of men as they pretend to think of us, which God forbid! But, taking things as they are, what course, on this point, is most fair and tolerant? The community, as well as this House, is divided into two parties. It seems to me, that all the most tolerant could wish, would be an equal division of the offices between the parties, and thus you might fix a reciprocal check on each other. But I ask gentlemen to be candid, and tell me whether they are at this time equally divided? Sir, they know that there are many more persons who now fill offices who agree with them in opinion than agree with us. As to myself, I care not who fill offices, provided they act honestly and faithfully in them. I can with truth say, so little party attachment have I on this head, that I never solicited to have any man discharged from office. Knowing that a large majority of those now in office agree with those gentlemen in political opinion, I am at a loss for the cause of all this clamor. They have no doubt some reason for it, which has not been declared. The fact is, they have a majority of the offices, and a majority of the people are with us. I am contented it should be so.

The gentleman has dwelt much on a subject which, from my habits of life, I am not enabled fully to notice; I must decide for myself, and, judging with the small share of information I possess, I cannot agree with him. I do not pretend to understand the subject as well as he does, but certainly he was not so perspicuous as it might have been expected. I mean, sir, his opinion on the common law. He told us that the judges only adopted such parts of the common law of England as suited the people, and that he apprehended no danger from this. Sir, I do apprehend danger from this, because I cannot find any authority given them in the Constitution to do it, and I suppose it is not an inherent right. Without pretending to know the extent of this common law, it has always appeared to me to be extremely dangerous to the rights of the people, for any person not elected by them, to undertake to exercise the power of legislating for them, and this adopting the common law is only another name for legislation. He has also told us, that the States had adopted it. If the States adopted it, it became a law of the State and not of the United States; but the adoption of it by the individual States, could not give the judges a right to adopt it for the United States. The judges have no powers but what are given by the Constitution or by statute, and this power cannot be found in either. He even told us, that the Constitution was a dead letter without it. I do not believe this was the opinion of the Convention that formed it, and by an examination of the debates of the State conventions that ratified it, it will not be found to be their opinion; nor is it, I believe, the opinion of all the judges of the Supreme Court, that the Constitution would be a dead letter without the common law of England. I have understood, that one of them has given it as his opinion, that the common law was not in force in the

United States. The gentleman told us, that the Sedition law was Constitutional, and that the judges had so determined. This we have often been told before; but, in my opinion, the contrary is the fact. I firmly believe there is no authority given in the Constitution to pass that law, and although the judges agree with him in opinion, I believe the people agree with me. He, like my colleague, did not pretend to say that the judges under the old system had too much business, but too much riding. The whole burden of the song seems to be riding and salary, salary and riding; you may destroy the office, but the officer must have his salary, and this I suppose without riding. The old system was, in my opinion, equal to every object of justice contemplated by its establishment.

The gentleman has ascribed to us the wish to have the courts viciously formed. Is it possible, that he can have so degrading an idea of the American people, as to suppose they would send men here to legislate on their dearest interests, so base and corrupt, as to wish their courts so formed that vice and not virtue should prevail in them? I am happy to say that gentleman is the only one who has uttered a sentiment so abhorrent to human nature. He also said, if you permit the State courts to execute your laws, you would have no Constitution in ten years. I have not heard any one express a desire that you should have no courts, or that the State courts should execute all your laws; but I do not believe, that if the State courts were to execute your laws, that they would destroy the Constitution which they are sworn to support. He has told us that we paid millions for an army which might be useless, and refused thousands to a Judiciary which was useful. As to the army, those who agree with me in sentiment are as clear of it as it is possible for men to be of any political sin whatever; we always considered them useless, except in a small degree, and voted against them.

But, says he, this is the President's measure; he may prevent it. This is indeed a bold assertion. Are a majority of this House so degraded, so mean, so destitute of honor or morality, as to act at the nod of a President? What the majority may hereafter do, I cannot tell; but I can say, as yet they have done nothing which even the eye of criticism can find fault with. But are we to infer from these charges, that it has heretofore been the practice for the President to give the tone to the majority of the House, and to wield them about as he pleased? I had, before, a better opinion of our adversaries. I had thought, and still think, that no man can wield a majority of this House; that the House is, and has been, too independent for this; to think otherwise, would be degrading to my country. Sir, I do not believe the gentleman from Delaware himself, with all his talents, can wield those with whom he generally votes, at his will and pleasure.

Much has been said about the manner in which the late law was passed, and the purpose for which it was done. I hope I shall be pardoned for saying nothing on this subject; enough, if not

too much has already been said on it; nor can I conceive that it has anything to do with the question.

The true question is, were there courts enough under the old system to do the business of the nation? In my opinion there was. We had no complaints that suits multiplied, or that business was generally delayed; and when gentlemen talk about Federal courts to do the business of the people, they seem to forget that there are State courts, and that the State courts have done, and will continue to do almost the whole business of the people in every part of the Union; that but very few suits can be brought into the Federal courts, compared with those that may be brought into the State courts. They will be convinced that under the old system we had federal judges and courts enough; besides, sir, I believe each State knows best what courts they need, and if they have not enough, they have the power and can easily make more. I am sure the old system answered every purpose for the State I live in as well as the new.

Until the present session, the people have not presented a single petition to this House on the subject of courts; and now, I believe, there are a majority of the petitioners in favor of the repeal; but their not having heretofore petitioned, is conclusive, in my mind, that they were perfectly satisfied with the old system. They know that they have the right to petition, and we know that they have exercised it whenever they pleased, and if they wanted these new courts, they would have told you so by petition.

The gentleman said he would forgive the gentleman from Virginia (Mr. GILES) for everything he said, except disturbing the ashes of the venerable dead. I did not understand the gentleman from Virginia to say a word about the illustrious WASHINGTON. It is needless for me to say what I think of him; I have said before what my opinion was; I sincerely regret that ever his name should be mentioned in this House in such debates as these; respect for his memory ought to forbid it.

He also told us, that we attempt to do indirectly what we cannot do directly. I do not know of any such attempt. The bill is certainly a direct attempt to repeal the act of the last session; but I have seen things done indirectly which I believe could not have been done directly: such was the army of volunteers; it surely was an indirect attempt to officer and get possession of the militia. The same gentleman challenges us to say there are any in the United States who prefer monarchy. In answer to this I say, there were such during the American revolutionary war, and I have not heard that they had changed their opinion; but as he has told us there were jacobins in the country, it is not unfair to suppose there are monarchists, they being the two extremes. We are also charged with a design to destroy the whole Judiciary. If there is such a design, this is the first time I ever heard it; no attempt of the kind is yet made. But what is the fact? We only propose to repeal the act of the last session, and restore the Judiciary exactly to what it was for twelve years, and this is called destroying the Judiciary.

The same gentleman told us that under the new system you would have an uniformity of decision in each circuit, and that it was not very desirable to have it uniform in every circuit. I differ with him; I think uniformity of decision desirable, for this reason, that a person knowing a decision of the Federal court on any given point in any part of the Union, may know that the same decision would prevail in every other court of the United States; and unless there is an uniformity of decision, you may have a different one in each circuit; a determination one way in Delaware, and another in Maryland. But, sir, from the very nature of the courts, you must have an uniform decision in either system; because, if different courts should decide differently, appeals would soon be carried to the Supreme Court, where the question would be finally settled.

Another curious principle was advanced by the same gentleman, which was this, that the judges received their pay from the date of their commissions. If they do, I am confident they are the only officers appointed by Government that do. I had always before understood, that the pay of officers did not commence until they accepted their appointments. On his idea a judge might have pay as a circuit judge, while he was holding a court as district judge, because he might be a district judge, and appointed a circuit judge without his knowledge; and before he was informed of his new appointment, might hold the court under the old, and the gentleman himself would not pretend to say that the proceedings of the court in such case would be illegal or irregular. The salary of the President is brought into view. I have never heard these gentlemen before complain that it was too high; if it is, I am perfectly willing to join them, and diminish it to what shall be deemed only an adequate compensation for services actually rendered, for the next Presidential term; sooner, the Constitution will not authorize its reduction.

To complete the scene, we were told of the sword, of civil discord, and of the sword of brother drawn against brother. Why such declamation? Why do we hear of such things on this floor? It is for them to tell who use the expressions; to me they are too horrid to think of. Do gentlemen appeal to our fears rather than to our understanding? Are we never to be clear of these alarms? They have often been tried without producing any effect. Every instrument of death is dragged into this question: sword, bayonet, hatchet, and tomahawk; and then we are told that the passing this bill may be attended with fatal consequences to the women and children. Can it be possible, sir, that the gentleman was really serious when he talked about an injury to women and children? He also told us, if you pass the bill and it should produce a civil war, not only himself but many enlightened citizens would support the judges. And have we already come to this, that enlightened citizens have determined on their side in case of a civil war, and that it is talked of in this assembly with deliberation and coolness? We certainly were not sent here to talk on such

FEBRUARY, 1802.

Judiciary System.

H. OF R.

topics, but to take care of the affairs of the nation, and prevent such evils. In fact, it is our duty to take care of the nation, and not destroy it. Compare this with the conduct of the former minority. I challenge them to show anything like it in all their proceedings. Whenever we supposed the Constitution violated, did we talk of civil war? No, sir; we depended on elections as the main corner-stone of our safety; and supposed, whatever injury the State machine might receive from a violation of the Constitution, that at the next election the people would elect those that would repair the injury, and set it right again; and this in my opinion ought to be the doctrine of us all; and when we differ about Constitutional points, and the question shall be decided against us, we ought to consider it a temporary evil, remembering that the people possess the means of rectifying any error that may be committed by us.

Is the idea of a separation of these States so light and trifling an affair, as to be uttered with calmness in this deliberative assembly? At the very idea I shudder, and it seems to me that every man ought to look on such a scene with horror, and shrink from it with dismay. Yet some gentlemen appear to be prepared for such an event, and have determined on their sides in case it should happen. For my part, sir, I deplore such an event too much to make up my mind on it until it shall really happen, and then it must be done with great hesitation indeed. To my imagination the idea of disunion conveys the most painful sensations; how much more painful then would be the reality! Who shall fix the boundaries of these new empires, when the fatal separation shall take place? Is it to be done with those cruel engines of death that we have heard of, the sword, the bayonet, and the more savage instruments of tomahawk and hatchet? And is the arm of the brother to plunge them into the breast of brother, and citizen to be put in battle array against citizen, to make this separation which would ruin the whole country? And why is all this to be done? Because we cannot all think alike on political topics. As well might it be said, because we cannot all agree in the tenets embraced by each particular sect of our holy religion, because one is a Calvinist and another a Lutheran, that each should be employed in plunging the dagger into the heart of the other. But suppose, sir, you agree to divide these States, where is the boundary to be? Is it to be a river, or a line of marked trees? Be it which it may, both sides must be fortified, to keep the one from intruding on the other; both the new Governments will have regular soldiers to guard their fortified places, and the people on both sides must be oppressed with taxes to support these fortifications and soldiers. What would become, in such a state of things, of the national debt, and all the banks in the United States? If we do wrong by adopting measures which the public good does not require, the injury cannot be very lasting; because at the next election the people will let us stay at home, and send others who will manage their common concerns more to their satisfaction. And if we feel power and forget right,

it is proper that they should withdraw their confidence from us; but let us have no civil war; instead of the arguments of bayonets, &c., let us rely on such as are drawn from truth and reason.

Another topic has been introduced, which I very much regret: it is the naming of persons who have received appointments from the late or the present President. I hope I shall be pardoned for not following this example. And one gentleman is named as having been an important member during the election of President by the late House of Representatives. It ought to be remembered there were others as important as the gentleman named. In talking about the late or the present President, it ought not to be forgotten that they both signed the Declaration of Independence, that they have both been Ministers in Europe, and both Presidents of the United States. Although they may differ in political opinion, as many of us do, is that any reason we should attempt to destroy their reputation? Is American character worth nothing, that we should thus, in my judgment improperly, attempt to destroy it on this floor? The people of this country will remember that British gold could not corrupt nor British power dismay these men. I have differed in opinion with the former President, but no man ever heard me say, that he was either corrupt or dishonest; and sooner than attempt to destroy the fame of those worthies, to whose talents and exertions we owe our independence, I would cease to be an American; nor will I undertake to say that all who differ from me in opinion are disorganizers and jacobins.

We have heard much about the document No. 8, sent to this House by the President, and are told that it is not correct. Admit everything which has been said about it, and does it amount to anything like the least invalidating it? No, it only shows a clerical error of no importance, and it must be agreed to be sufficiently correct to prove the inutility of the late system. The gentleman from South Carolina told us, that many learned men who agreed with us generally in politics, differed with us on the present question. This I never heard before; but, suppose the fact to be so, it unquestionably proves that with us each man makes up his own opinion for himself. He told us of one, who had lately held a high office under the federal Government, who had, when in office, made a report, a part of which was directly against our opinion, and that he was high in the ranks of the opposition. The opinion of that gentleman formerly given is nothing more than this, that he at that time thought the then Judiciary system might be amended. From the rank which he assigned to the author of the report, he is certainly much better acquainted with the opposition than I am. He included, among those who differed with us on the question, and who generally agreed with us, all the judges of Virginia. I am not acquainted with but few of these gentlemen, and do not know anything of the political sentiments of those with whom I am not acquainted; but if the few with whom I am acquainted differed with us in opinion, they would not esteem us the more for

relinquishing an opinion before we were convinced it was erroneous. But, sir, judging from a pamphlet which has been read during this debate, and said to contain their opinion, it is clear to my mind, that we perfectly agree. The same gentleman read to the Committee a part of a lecture of one of the judges of Virginia, which, if it strengthened his opinion on the present question, ought to convince him that the Sedition law was unconstitutional. And what will he say to the opinion of the same judge, on the favorite doctrine that the common law of England is in force in the United States? He told us, by passing the bill we shall not save more than the small sum of \$5,000. Here he and my colleague (Mr. STANLEY,) differ a little in opinion. My colleague thinks the saving will be somewhere about \$40,000, though not a dust in the balance. Sir, I would vote for the bill, on the principle of economy, if it would only save the useless expenditure of \$1,000 of the public money. Let it be remembered that public money in all countries is drawn from the sweat of the people.

The same gentleman also told us, that we ought to keep up these courts to convince the nations of Europe of the stability of our Government; to look respectable abroad. Sir, the public good alone shall be the principle by which I will always govern myself, without considering what the people of Europe may think. I will never consent to keep up what I deem useless and expensive establishments, merely because it may make us look respectable abroad, or to convince the people of Europe of the stability of our Government. Nor can I believe that the passing the bill, which is altogether an internal regulation, can affect our national character in Europe; it is one of those internal regulations that the Governments of Europe care nothing about. All that independent nations require of each other is, that they govern themselves with honesty and equity towards other nations.

The gentleman asked us to show him the clauses in the Constitution which authorize the repeal of the late Judiciary act. I will answer this question, by asking another: Can he show any clause in the Constitution which gives express and direct authority to repeal any law? He cannot; there is no such clause. But the authority given to pass laws, gives also the authority to repeal, except in cases named, where you are expressly forbid, and this is not a forbidden case. The whole authority to repeal is an implied one; you may establish post offices and post roads, you may establish courts, and if you can repeal the one, you may repeal the other.

The same gentleman says, if you pass the bill, you make the Judiciary dependent on a faction. Who is the faction, sir, the majority or the minority? Formerly, I have heard it in said this House, the majority was the nation, and the minority a faction; and has the meaning of these words now changed? This the gentleman did not tell us.

He also told us, there were but two ways of governing; one by the Judiciary and the other

by the bayonet. Sir, we are so daily in the habit of hearing of all the instruments of death, that a stranger would suppose no other articles were manufactured or used in the United States, and that it was a standing order of the day to be told of them; and it is a little extraordinary, that most of the gentlemen who have spoken on the other side, have reminded us of them. Power, says the gentleman, in whatever hands it may fall, will be abused. I hope that he is mistaken, and that time will convince him of his error; but if it should be so, no one in this country will hold power long, because there is a peaceable corrective in the nation, the application of which is perfectly well understood, and is, in my opinion, a sovereign antidote to prevent this abuse. I mean a remedy to which I have often already referred the gentleman; it is an answer of itself to almost everything that has been said—I mean elections. These gentlemen seem to depend on threats and bayonets. We always had a better dependence; it was elections and the good sense of the people; and these, it seems to me, is what every true republican ought to depend on, in a country where the people would as soon change a President as a constable for doing wrong.

Do gentlemen expect to affright us by the constant cry of terror, or do they intend to prepare the nation for civil war, and all the evils consequent to such a state of things? If such be their object, let me tell them they will find themselves mistaken in both respects; they will not deter us from doing what we think ought to be done; and if all Congress were to join, they could not produce a separation of the States: the people would laugh to scorn all those who should wickedly make the attempt; they would say to them, in language not to be misunderstood, We gave you no authority to divide us from our brethren, we are determined never to fight them, let you determine what you may. Instead of fighting our neighbors, we will hold elections, and send more faithful men to fill the places you have disgraced.

It is rung in our ears from all quarters, that we shall destroy the Constitutional divisions of the departments by passing this bill. The Legislative, the Executive, and Judicial, will all be unhinged by keeping them exactly in the same situation they have been for twelve years; and to add to all the other mighty charges, we are told, that we are about to repeal the law because the judges do not agree with us in political opinion. This could scarcely be thought to have much weight, if the gentleman will reflect that six judges are quite enough to sound the tocsin, whenever there shall be danger that the other departments are about to invade the liberty of the people; or is it necessary to keep up these new judges to prepare the people for this terrible work of plunging the bayonet into the breast of their nearest kinsman or neighbor? Whatever may be the opinion of the judges lately appointed in other States, I hope I may be permitted to state, that the judge appointed in North-Carolina does not disagree with us in politics; and if a sincere and disinterested friendship for a worthy man, whom I have

FEBRUARY, 1802.

Judiciary System.

H. OF R.

known from his infancy, and who left a lucrative practice, when he took a seat on the bench, could influence my vote, I should certainly vote against the passage of the bill. But, sir, shall friendship, shall respect for a worthy man, induce us to give a vote which we know to be wrong? Were it possible, we should not only despise ourselves, but every man of worth and candor would also despise us.

Mr. Chairman, it was my intention when I rose, to have examined more particularly the Constitutional ground which the gentlemen on the other side have taken; but as I most cordially agree in the opinion delivered on this subject, by a very respectable member from Massachusetts, (Mr. BACON,) and as I also agree with the gentleman from Virginia, (Mr. GILES,) it would be needless to take up the time of the Committee in repeating arguments which have been some days delivered and remain yet to be answered.

I beg pardon of the Committee for the time I have occupied—I did not expect to have detained them so long, but the importance of the subject, and the wide field into which it has been branched by those who preceded me, will be my apology.

The further consideration of the bill was then postponed till to-morrow.

WEDNESDAY, February 24.

A memorial of sundry merchants and underwriters of the City and State of New York, was presented to the House and read, praying relief in the case of the capture and condemnation of certain vessels and their cargoes, of which the memorialists are owners or assurers, by the cruisers and courts of the French Republic, during the late European war.—*Referred*

A Message was received from the President of the United States, communicating a report of the Secretary of the Treasury on the subject of Marine Hospitals, which appear to require Legislative attention; also, information respecting the situation of seamen and boatmen frequenting the port of New Orleans, and suffering there from sickness, and the want of accommodation. The Message and documents accompanying it, were read, and ordered to be referred to the Committee of Commerce and Manufactures.

Resolved, That a committee be appointed to bring in a bill to alter the time of holding the District Court of Maine.

Ordered, That Mr. WADSWORTH, Mr. CABELL, and Mr. VAN NESS, be appointed a committee, pursuant to the said resolution.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. GODDARD.—Mr. Chairman, the bill on your table having been so long before the Committee, and the principle of the first section, now under consideration, having been so fully and ably dis-

cussed, that I should content myself with a silent vote, if the subject was of less importance. To this course I should be more inclined, as gentlemen on the other side of the House have already expressed an opinion that nothing new could be offered to the Committee, and manifested an uneasiness that the debate should be further protracted.

But, sir, the man who deems this subject as important as I do—as one involving the dearest and best interests of our common country—will seek rather for an apology for silence than for speaking.

Before I enter upon a distinct consideration of the two questions involved in this discussion, I hope the Committee will pardon me for adverting to the history of this bill in this House. When the bill first came from the Senate, a motion was made to refer it to a select committee, which had been appointed in this House on the subject of the Judiciary system of the United States. That motion I then supported, with an anxious hope that it might prevail. The gentleman from Virginia, (Mr. GILES,) being chairman, and myself a member of that committee, I felt extremely solicitous there to meet—to lay aside all party feelings or prejudices; to banish all considerations, when or how the act now proposed to be repealed, was passed; to confine ourselves to the inquiry whether the existing system does not afford to the citizens of the United States a fairer chance to obtain prompt and speedy justice in their courts, than the former system now proposed to be revived. But, sir, the chairman of that committee then told us, that a great Constitutional question had been raised; that such questions were improper for the consideration of select committees; that a fortunate period had arrived for its discussion; that it was proper to be considered only in Committee of the Whole; and that it must be decided.

On a subsequent occasion, when a motion was made to postpone the consideration of this bill to a future day, the solicitude which I had felt to avoid an unnecessary decision of the fatal question was revived; my dormant hopes returned, fortified by petitions from respectable sources, informing us that the present organization of the courts, in one circuit at least, was not only superior to the old system, but absolutely necessary to the attainment of justice in that circuit. Animated with a hope, excited by those petitions; deeply impressed with a sense of the dangerous and deadly blow which I then was, and still am, persuaded the repeal of this law will give to the Constitution, I then expressed a wish, which, although it drew upon me from one gentleman a charge to delay and embarrass the business of the session, was the honest effusion of my heart; that an opportunity might still be given to ascertain whether the act proposed to be repealed is not what its title imports: "An act for the more convenient organization of the courts of the United States." That our inquiries might still be confined to that question, and if the result of such inquiries should prove to us that the courts as organized by the act, now proposed to be repealed,

were throughout the United States what these petitions prove them to be in the third circuit: an useless—a dangerous discussion of the Constitutional question might be avoided. We were then told, sir, by another gentleman from Virginia, (Mr. RANDOLPH,) that a great Constitutional question had been raised, (raised let me add by the gentlemen who support the bill,) and that it must be decided. That gentleman then told us what that question was, "Whether the Judiciary is a co-ordinate or subordinate branch of our Government?" Defeated in both these attempts, we are at length brought to a consideration of the important principles of the first section of the bill on your table.

After the repeated declarations of the two gentlemen from Virginia, that the great Constitutional question must be decided, although in doing it a judicial establishment may be abolished, which is necessary to the administration of justice, those who oppose the passage of the bill might be excused from making any remarks on the question of expediency. Yet, sir, lest silence on that question should, by some others, be construed into an admission that the new system is not preferable to the old, now to be restored, I will take the liberty to submit a few remarks on that question.

I am induced to believe that there must exist between the several gentlemen from Virginia, who have spoken on this subject and myself, some radical difference of opinion as to what is a due administration of justice in courts of law. One gentleman from Virginia (Mr. THOMPSON) expressed his astonishment at what he was pleased to call, this immense establishment. To prove its inutility, he declared that he came from a State where justice was "truly and speedily" administered, and produced to the Committee a document to show that there are now pending before a court in that State, in which only one old man sits as judge, no less than two thousand six hundred and twenty-seven causes undecided.

On a former occasion, which has been alluded to, I took the liberty to suggest, as a reason for confining ourselves to an inquiry into the expediency of the measure only, that the organization of the courts, as it now exists, was calculated to carry justice home to every man's door; another gentleman from Virginia declared that to be the very reason why he should vote for the repeal of the law, intimating that we had too much Federal justice. I must believe that those gentlemen take, as the basis of their opinions, the position, that suits at law are evils in community, and infer that the organization of courts, which is best calculated to deter citizens from applying to them, is the best. Hold out to the citizens a prospect of an endless continuance of the evil, and they will not involve themselves in it.

For, sir, what prospect of justice can that suitor promise himself who sees that two thousand six hundred and twenty-seven causes, which have been accumulating for ten or twelve years, must be decided before his can be attended to? This administration of justice may suit the state of

society in Virginia, but it is not such as the people of the United States meant to provide for themselves under that happy form of Government which they have adopted. In looking into the sixth article of the amendments to the Constitution, which have been adopted by the people, I find this expression of the public will, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial," &c. If, sir, the old system is to be revived, what, let me ask, will be the condition of persons accused of crimes? And who may not be accused? It is acknowledged by those who advocate the repeal of this law, that under that system, owing to the vast distance which judges were obliged to travel, the rising of rivers, impassable roads, and various inevitable accidents, judges could not, and frequently did not, arrive in time to hold a court. The same thing, owing to the same causes, will happen hereafter. What will be the consequence? Persons accused of crimes and confined in your jails to await their trials, must continue perhaps in the confinement of a dungeon six months longer before they can have an opportunity of having their guilt or innocence ascertained before a court of law. What, under this system, becomes of the right of the accused to a speedy trial, sacredly guaranteed to him by the Constitution? If innocent, you punish him; if guilty, you inflict a double punishment, one before, and one after conviction. This consideration alone, in a free country, ought to outweigh all arguments arising from the trifling additional expense to which we are subject by the act proposed to be repealed. But however important the speedy administration of justice in criminal prosecutions, that alone was not all which the citizens intended to secure to themselves when they adopted this Constitution. The speedy administration of justice in civil actions was then deemed important. The Convention of the State of Virginia, when this Constitution was adopted, proposed certain amendments to it, and, among others, a bill of rights. In that bill of rights I find the twelfth article expressed in this manner: "That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely, and without sale; completely, and without denial; promptly, and without delay; and that all establishments or regulations, contravening these rights, are oppressive and unjust." The Convention of North Carolina, copying after Virginia, adopted precisely the same amendments. Both those States then thought, that all establishments or regulations contravening the right of obtaining justice, promptly and without delay, were oppressive and unjust. Those amendments were proposed to the Constitution of the United States, and regarded the attainment of justice in the courts of the United States. Those States, then, were not afraid of a too prompt administration of federal justice. Now a system, which has confessedly been found to prevent courts from being holden, and to postpone suitors from term to term without trial, and which,

FEBRUARY, 1802.

Judiciary System.

H. OF R.

from the very nature of its organization, will often produce that effect, is to be restored; and one which all agree is calculated to insure a speedy trial, is to be abolished. I am not disposed to dwell long upon this subject, not having been a member of this House when the act now to be repealed passed. But, sir, when I heard the objections to the old system, and the advantages of the new one, so fully stated by the gentleman from Delaware, (Mr. BAYARD,) when I found that the plan of separating entirely the supreme from the circuit courts originated as early as the year seventeen hundred and ninety, and was then recommended to Congress by the then Attorney General, (Mr. RANDOLPH,) as appears by his report, read yesterday by the gentleman from South Carolina, (Mr. HUGER;) when, as that gentleman has truly observed, the document before us contains only the business done by the judges of the supreme and district courts in the circuit courts, and not the business of their own particular courts also; when I reflect on the appellate jurisdiction of the Supreme Court, and the extreme absurdity of subjecting, in another place, the determinations of the same men to the revision of themselves, might I not rationally indulge the hope that gentlemen would have been satisfied, that the Judicial establishment, as it now exists, does furnish to the citizens a much fairer chance for the attainment of justice than the old one? and that they would have permitted the Constitutional question to have slept for the present? But, sir, we are compelled to consider whether the bill on your table can pass without a violation of the Constitution. Before other considerations are attended to, I hope I may be permitted to present to the Committee one argument, derived from the progress of the bill itself. A gentleman from Massachusetts, (Mr. BACON,) told us some days past, that, on this subject, the Constitution speaks a plain and intelligible language. Let me inquire where gentlemen have found this plain and intelligible language. One gentleman, taking for granted the position to be proved, and reasoning *ab inconvenienti*, has found it in the evil consequences, resulting from establishing a different doctrine:—"an army of unimpeachable judges, with salaries, and without offices."

Another has found it in a distinction between supreme and inferior courts, derived from the words "may" and "shall." Another, in the words, "from time to time." Another, in that clause of the Constitution, which authorizes Congress to establish tribunals inferior to the Supreme Courts supplying the word *abolish*, omitted by the Convention which framed the instrument. Another, in a discovery, that misbehaviour is no crime in a judge, for which he can be impeached; and therefore the Legislature must, *ex necessitate rei*, possess the power of removing judges from office.

Another has found the language in "the will of the people," not literally expressed in their written Constitution, but in their elections, in a change of rulers; believing, I presume, that the *vox populi* is *vox dei*, and that human, must yield to divine laws and constitutions.

Another has found it in the tyranny which will be established, if you suffer the judges to test the laws by the Constitution. Another, in the words "to promote the welfare," in the preamble to the Constitution. Another, in an exposition of the word "hold," connected with that clause of the Constitution, which authorizes the President to grant commissions.

And last of all, the gentleman from Virginia, (Mr. R.) abandoning all these, has found it in the "*quo animo*," as he expresses it, with which you give your vote: erecting in every man's mind a tribunal before which to test the constitutionality of measures. The doctrine is—believe that you do not violate the Constitution, and it is not violated! This last position, whatever its merits, has not novelty to recommend it. "As a man thinketh, so is he," has been taken for the basis of many false speculations before this time. Instead of finding this plain language in any one part of the Constitution, ought not the various grounds which have been taken by the friends of the bill, to teach gentlemen to distrust the soundness of the doctrine which they wish to support? Shall I be told, in answer to this, that those who oppose the bill have taken grounds as various in their opposition to it? No, sir, we uniformly ground our arguments on two plain and unequivocal sentences in the Constitution: "The judges both of the superior and inferior courts shall hold their offices during good behaviour; and shall receive for their services a compensation, which shall not be diminished during their continuance in office." Those who oppose, are indeed obliged to follow those who support the bill, in their devious course; and find arguments to answer the constructions, by which these words, which are truly plain and intelligible, are attempted to be done away. But having been apprized by the gentleman from Virginia, that the great Constitutional question to be decided is, whether the Judiciary is a co-ordinate or subordinate branch of our Government; and whether it is competent for the courts to decide upon the constitutionality of laws; and this bill having been brought forward at a period, which gentlemen are pleased to call fortunate for that purpose, I hope I shall be excused for requesting the attention of the Committee for a few moments to this question. One gentleman, from Virginia, (Mr. RANDOLPH) having said he was not disposed to contend about the terms co-ordinate and subordinate, I am willing to substitute others. Is the Judiciary a distinct and independent branch of the Government, ordained and established by the Constitution as such? In examining this question, I may be permitted to inquire, whether it is competent for the judges to pronounce on the constitutionality of your laws. One gentleman from Virginia (Mr. GILES) seemed disposed to waive this inquiry, probably in consequence of the sentiments of a different kind, avowed by his friend from Massachusetts, (Mr. BACON,) yet it deserves to be considered; and that gentleman could not suffer it to pass in silence, but charged the claim of such power to the judges as one of their crimes.

Although proving this, does not, I admit, prove

that the judges of our courts are, by the Constitution, rendered independent of the Legislative power; yet it furnishes a strong reason for giving to that instrument, if it will bear it, such a construction as will make them so. Judges dependent on the Legislature for their continuance in office, for the continuance of their offices, or for a continuance of their salary, cannot be expected to decide against the wishes of those on whom they depend. Gentlemen ask, where we find in the Constitution a power given to the judges to decide against the constitutionality of laws? I answer, in the sixth article, these words: "This Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." The judges are not only sworn to support the Constitution, but their oath of office binds them to judge "agreeably to the Constitution and the laws." The expression, "supreme law of the land," imports inferior and subordinate laws. What are those laws, unless acts of Congress? The expression respecting laws made pursuant to the Constitution, necessarily implies that laws may be made which will not be pursuant to that instrument. Such are not the supreme law of the land. They are not law. Shall not the judges when called upon to decide if, in their opinion, a bill should be passed by Congress against the Constitution which assumes the form of a law, declare it, I will not say null and void, if gentlemen dislike those terms, but to be no law?—not being made pursuant to the power delegated to Congress by the Constitution. In the case of *Vanhorne vs. Dorrance*, decided in the circuit court for the district of Pennsylvania, reported in *Dallas's Reports*, Judge Patterson is made to say:

"What is a Constitution? It is the form of Government delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The Constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the Legislature, and can be revoked or altered only by the authority that made it. The life-giving principle and the death-doing stroke, must proceed from the same hand. What are Legislatures? Creatures of the Constitution; they owe their existence to the Constitution; they derive their power from the Constitution; it is their commission; and therefore all their acts must be conformable to it, or else they will be void. The Constitution is the work and will of the people themselves in their original, sovereign, and unlimited capacity. The one is the work of the creator and the other of the creature. The Constitution fixes limits to the exercise of Legislative authority, and prescribes the orbit within which it must move. In short, the Constitution is the sun of the political system around which all Legislative, Executive, and Judicial bodies must revolve. Whatever may be the case in other countries, yet in this there can be no doubt that every act of the Legislature repugnant to the Constitution is absolutely void."

In another part of the same case, the same

Judge, speaking of an act of the Legislature of Pennsylvania, upon the constitutionality of which he was then deciding, says:

"If this be the legislation of a Republican Government, in which the preservation of private property is made secure by the Constitution, I ask, wherein it differs from the mandate of an Asiatic Prince? Omnipotence in legislation is despotism. According to this doctrine, we have nothing we can call our own, or are sure of for a moment; we are all tenants at will, and hold our property at the mere pleasure of the Legislature. Wretched situation, precarious tenure! And yet we boast of property and its security, of laws, of courts, of constitutions, and call ourselves free!"

Before I lay aside this case, I will take the liberty to read the remarks of the same Judge, respecting the tribunals of justice:

"The rights of private property are regulated, protected, and governed by general, known, and established laws, and decided upon by general, known, and established tribunals—laws and tribunals not made and created on an instant exigency, or an urgent emergency, to serve a present term or the interest of a moment. Their operation and influence are equal and universal; they press alike on all. Hence security and safety, tranquillity and peace. One man is not afraid of another, and no man afraid of the Legislature."

In another case, reported in the same book, Judge Iredell, speaking of Congress, says:

"Upon this authority, there is, that I know, but one limit, that is, that they shall not exceed their authority. If they do, I have no hesitation to say that an act to that effect would be utterly void, because it would be inconsistent with the Constitution, which is a fundamental law, paramount to all others, which we are not only bound to consult, but sworn to observe."

In the case of *Bull and wife against Calder and wife*, as well as in several other cases, the same doctrine is maintained by the Judges of the Supreme Court. And, sir, it is to this doctrine that we owe our liberty—which consists in security to our persons, our property, and reputation. And will the gentleman from Virginia impute the maintaining of this doctrine to the judges as a crime? Is this the question to be decided? Are we to show our control over the courts, to repeal this law, and put the judges down? Let it be remembered that, in these decisions, the judges were not "claiming powers," as the gentleman from Virginia has been pleased to express it, but solemnly deciding between citizen and citizen, the rights of private property. And let us arrogate to ourselves as much wisdom as we please, who, let me ask, are most competent to decide correctly important questions arising under the Constitution, our judges or our legislators? Legislatures will, in violent times, enact laws manifestly unjust, oppressive, and unconstitutional; and that, too, under the specious pretext of relieving the burdens of the people. Such laws, it is the business of the judges, elevated above the influence of party, to control. Let me mention an instance: Previous to the adoption of this Constitution, and during the time of the paper-money system of the State of Rhode Island, an act was passed by the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

Legislature of that State, subjecting to a penalty any person who should refuse that money, then in a very depreciated state, for articles offered for sale in the market; and a new and summary mode of prosecution and trial was provided. The money was offered to a butcher in the market for his meat; it was refused. An action was brought to recover the penalty, and I now see in his place an honorable member of this House, then a judge of the supreme court of that State, who concurred with the rest of the judges of that court in declaring the law to be unconstitutional and void.

The consequence was, that the judges were summoned to appear immediately before the Legislature to answer for their conduct, and it was with the greatest difficulty that the Legislature were prevented from dismissing them instantly from office. I mention this to show, that such has been, and such will be, the conduct of Legislative bodies. Such ought always to be the conduct of judges, and this can with certainty be effected in no other way than by rendering them independent of the Legislature, subject only to removal by impeachment. But, sir, I beg leave again to recur to the amendments which were proposed by certain States to the Constitution, at the time of its adoption, to show what was the sense of those States, at that time, on the importance of the independence of the Judiciary to the liberties of the people of this country. In the declaration of rights proposed by the Convention of the State of Virginia, I find the fifth article is in these words, "that the Legislative, Executive, and Judiciary powers of Government, should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling, and participating in, the public burdens, they should, at fixed periods, be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections." Then, sir, the doctrine of the responsibility of the judges to the will of the people, did not prevail in Virginia. It was not then thought necessary that the judges should return to the mass of the people, to restrain them from oppression. The Convention of the State of North Carolina recommended a bill of rights as an amendment to the Constitution, containing precisely the same words; and to render the judges as independent as possible, the convention of each of those States recommended also an amendment, that the salaries of the judges should neither be increased nor diminished during their continuance in office. Who, then, can say that a limitation of the Legislative power was not intended by those who adopted the Constitution? and, sir, it was intended by those who framed the Constitution. Gentlemen admit that the words in the first section, article third, of the Constitution, "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their service a compensation, which shall not be diminished during their continuance in office," were designed to secure the independence of the judges while in the exercise of their official duties, as

long as the office continues. Let me ask gentlemen, if, upon their construction, that you may abolish the office, this end is really attained? In what consists the independence of a judge? It consists in having his mind elevated above the fear of any evil consequence resulting to him from rendering upright and impartial judgments; in his being so situated as not to have his mind wrought upon, directly or indirectly, by any other considerations than those arising from the justice of the causes which he is about to decide. Considering the infirmities of human nature, the framers of the Constitution supposed it necessary, in order to secure an administration entirely impartial, that the judge should know that, let him decide as he will, provided he acts honestly, he shall not be deprived of his office, nor suffer a diminution of his salary.

Here, let me ask, what difference in effect there can be upon the mind of a judge, while in the administration of justice, to know that, in consequence of the decision which he is about to make, his office will be taken from him, or he taken from his office? Will not the effect be precisely the same in one case as the other? In either case the office and the judge are separated from each other. Upon the construction given to this part of the Constitution by the friends to the bill, the judge is not to be turned out of office, nor his salary diminished, lest his independence should be impaired; and yet he is to cease to exercise judicial functions, and to cease to receive any salary if he decides against the wishes of the Legislature—and still be independent! If the Constitution meant to secure the independence of the judges, while in office, let gentlemen apply to it one rule of construction of instruments of writing; so construe "*ut res magis valeat quam pereat*." And, then, let them ask themselves, if, upon their construction, the end which they acknowledge the Constitution had in view is attained? But if the gentleman from Virginia (Mr. GILES) can avoid the first part of the sentence, "the judges shall hold," &c., by considering hold, as implying tenure under the President, and not operating as a limitation upon Legislative power; how does he avoid the second: "They shall at stated times receive for their services a compensation which shall not be diminished," &c.? I am sensible it has been attempted, by saying that compensation is given for services rendered, and if you deprive the judges of the power of rendering services, by abolishing their offices, the compensation ceases of course. But, I apprehend, you cannot entirely dispense with his services. If you abolish the court in which he ordinarily administers justice, he may still grant commissions of bankruptcy, issue judicial writs, and perform various other services. To my mind the plain language of the Constitution is this: Congress may "from time to time," as the exigencies of the country, arising from its increasing population, growing commerce, or other causes, shall require, ordain and establish such inferior courts as may be deemed necessary. In the exercise of this power, the Constitution supposes that a sound discretion will govern;

that there will be no abuse of it. That, as the country shall advance in population and wealth, its situation may be such as to require more inferior courts, but never less. That when courts are once established, you may, if you please, alter, modify, change, or transfer jurisdiction from one court to another. But whatever is done upon this subject, must always be done with a sacred regard to the inviolability of the judges already in office: and if you wish entirely to change the organization of the courts, it can only be done when the offices of the judges are vacant, or with reference to the happening of that event. You cannot totally divest a judge of all judicial authority or diminish his salary, and thereby compel him to resign his office; nor deprive him both of office and salary. Upon any other construction, the provisions of the Constitution intended to secure the independence of the judges, are not only inefficient, but absurd. The word *hold*, itself, upon which the gentleman from Virginia has predicated his argument, supports this construction. It implies an inseparable connexion between the person holding and the thing held; which can no more be dissolved in one way than in another. All means looking to that end are alike forbidden.

A gentleman from Massachusetts (Mr. BACON) has defined a court to be an institution for the administration of justice; and said that he could no more conceive of a court without a judge than of a Legislature without legislators.

[Mr. BACON explained.—He said he was not responsible for the definition, he took it from the gentleman from Pennsylvania, (Mr. HEMPHILL.) He did not say "without judges, but without offices."]

Mr. GODDARD proceeded. I am not able to recollect the force of the gentleman's argument, unless he meant to say that the abolition of a court necessarily put down a judge. The gentleman quoted the twenty-seventh section of the act of last session, which abolished circuit courts, as a precedent in point to justify the repeal of that law. But the abolition of a court does not necessarily imply that a judge is put out of office, or the office itself discontinued. Congress, by law, erect courts, give names to those courts, and create offices; but this same justice cannot be administered in them until afterwards, by an act of the President, judges are appointed. The circuit courts, as organized before the act of last session were holden by judges of the Supreme Court, assisted by district judges. Abolishing circuit courts did not affect the judges of the Supreme Court, or the district judges; each remained independent judges, holding their proper offices. A name of the institution is nothing, and I very much question, whether the name of the Supreme Court may not be changed. The Constitution, it is true, has said that there shall be one Supreme Court. It implies that there shall be one court, supreme or superior to all others—but may it not be called by what name you please? But it has been said, upon the same principle that you can withdraw from a court a part of its jurisdiction, you may withdraw the whole, and leave a naked

judge, without any jurisdiction, following a salary; this does not follow. As I have before remarked, a judge may exercise many judicial functions without a court to sit in; and I have also remarked, that the power to erect new tribunals from time to time, was always to be exercised with sound discretion. The Constitution does not go on the ground that it will be abused; that new courts will unnecessarily be erected; that power is no otherwise limited than by enjoining upon the Legislature, to do all which is done on this subject with an eye to the independence of judges already in office. To aid us, sir, in our construction of the Constitution of the United States, I beg leave to turn the attention of the Committee for a few moments to some of the State constitutions. I believe we shall not only find, in many of them, the principle of the independence of the Judiciary admitted; but, in some of them, expressly, the doctrine for which I now contend. Some of the State constitutions existed in their present form anterior to the adoption of the Constitution of the United States; some have been since amended. In the bill of rights prefixed to the constitution of New Hampshire, are these words: "It is, therefore, not only the best policy, but for the security of the rights of the people, that the judges should hold their offices, so long as they behave well." In the constitution of that State, under the head of the Judiciary power, are these expressions: "The General Court are hereby empowered to make alterations in the power and jurisdiction of the courts of common pleas, and general sessions of the peace, respectively; or if they shall judge it necessary for the public good to abolish those courts," &c. Previous to the adoption of this constitution, which was but a revision of a former one, there existed in that State a Supreme Court, the judges of which, as well as those of the inferior courts, held their offices during good behaviour.

The people of that State supposed it necessary expressly to delegate to the Legislature the power of abolishing inferior courts, the judges of which hold their offices during good behaviour, and for that purpose, among others, amended their constitution. And, sir, delegating to the Legislature the power of abolishing inferior courts, clearly implies that the power of abolishing the Supreme Court was withheld. Can, then, the Legislature of New Hampshire repeal the law organizing the Supreme Court of that State? Clearly not. In the bill of rights, as well as in the constitution of Massachusetts, the independence of judicial officers is provided for, and in the article which relates to the Executive power, I find these expressions: "as the public good requires that the Governor should not be under undue influence of any of the members of the General Court, by a dependence on them for his support," &c.; then follows a provision for an honorable salary to be provided for him, also for the judges of the Supreme Court. I read this for the purpose of showing that, if the public good requires that the Governor should be elevated above an undue influence of the members of the General Court, it

FEBRUARY, 1802.

Judiciary System.

H. OF R.

much more requires that the judges should be above that influence. But, sir, I will not detain the Committee by adverting to all the State constitutions, in which the independence of the Judiciary department is established; I will only notice the expressions in that of New Jersey: "The judges of the Supreme Court shall continue in office for seven years." An act of the Legislature of that State would be necessary to organize that court. Can a subsequent Legislature repeal that act before the expiration of seven years? Can a judge be said to continue in office after the office is abolished? I presume not. The Constitution is imperative—he shall continue in office. Here the word hold, implying tenure, is not used, and yet the principle is precisely the same as that adopted in the Constitution of the United States. The difference consists only in the time for which the office is held. In New Jersey, the time is definite; in the Constitution of the United States, indefinite, until the happening of an event—the misbehaviour of the judges. In many of the State constitutions, provision is made for the removal of the judges upon the joint application of both branches of the Legislature, to the Executive. Having these constitutions and the statute of 12th and 13th William, which introduced that provision in England, before them, the framers of our Constitution chose to discard it, and provide for the removal of judges only on impeachment of the House of Representatives before the Senate, and a judgment of that body, in which two-thirds must concur. Gentlemen admit that, in England, the independence of the judges has ever been the pride and boast of that country. That it has tended to the preservation of the liberties of the people. But, they say, upon our construction of the Constitution of the United States, judges will be more independent than they are in England. Suppose it is admitted; what follows? Nothing, but that the liberties of the people of this country are better secured than in that. From the nature and principles of the British Government, there is no danger of the judges being removed but for misbehaviour. One branch of the Legislature of that country being hereditary, the other elective, if the judges decide uprightly, but against the wishes of the popular branch, the other branch will not probably concur in a vote to remove them. If they decide uprightly, but against the wishes of the hereditary branch, the other will not probably concur in such a vote, and they can be removed only upon the joint address of both branches. Our Government being more free, and wholly elective, a mode that gives greater independence to the judges than that is adopted. No joint vote of both branches of the Legislature can, in no way, remove a judge or separate him and his office. A vote of the House of Representatives may impeach; a vote of the Senate, two-thirds concurring, may remove. Several gentlemen, in discussing this subject, have gone very far from the question before us, in bringing into view matter foreign from the merits of the question. I shall not attempt to follow them. But, sir, suffer me for a moment to notice one charge which is

brought against the judges: They have attempted, say gentlemen, to introduce the common law into this country, and this gentlemen seem to consider as a crime. I had, indeed, believed that the people of this country esteemed the common law as their privilege. In the seventh article of the amendments which have been adapted to the Constitution, it is expressly recognised, "in all suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." The people of the State of Maryland esteemed it so important, as to introduce a provision respecting it, into their bill of rights, the third article of which declares, "that the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law." But, sir, I will not pursue this subject. Gentlemen have told us that they are honest—that they have the good of their country at heart; that elections in this country are always to be confided in; that the people will, by their votes, cure all the evils which may be introduced. Let the motives and views of gentlemen be ever so pure, I cannot but shudder at a principle, which is calculated to prostrate at the feet of one department of the Government, another department co-ordinate with itself—independent of it; and unless gentlemen can prove to me that there is something more than human in the American character, I cannot cease to fear the evils which will result from this measure. Ought not gentlemen, at the moment of the triumph of one party over another, to distrust themselves? The human mind is often influenced by motives which it does not acknowledge, even to itself. Hazael, when told that he would set fire to the strong holds of Israel, and commit other abominable crimes, exclaimed, "But what! Is thy servant a dog, that he should do this great thing?" But he went away and did the very things which he thus spurned at. I do not believe that gentlemen wish to introduce into this country the horrid scenes which have lately passed in review before us in France. But they are too recent and too horrible to be soon forgotten. Too horrible, indeed, to be mentioned.

Let gentlemen ask themselves if this measure does not look the same way? There was a time when the Brisotines in France were thought honest, virtuous, and patriotic. They claimed from the people unlimited powers; confiding in them, unlimited powers were granted. Let gentlemen call to mind the time when, in that country, Legislative, Executive, and Judicial powers were exercised by the same persons; let them remember the scenes, too dreadful to be repeated, which flowed from the concentration of all the powers of Government in one branch. And let them ask themselves if we have no reason to tremble at the consequences which may result from the introduction of the same principle, by the passage of the bill on your table?

Mr. RUTLEDGE.—I have kept my seat, Mr.

Chairman, until this late stage of the debate, under a hope that the arguments of gentlemen who advocated the passing of this bill would convince me it is not unconstitutional; but, after having listened most attentively to them for many days, I find the deep impression made upon my mind that it attacks the very vitals of our Constitution, has been fortified and extended instead of being dismissed.

It is not necessary, sir, for me to call to your recollection what was the situation of America anterior to the formation of the present Government. Our State Governments had proved to be mere ropes of sand. Experience had shown the Confederation to be miserably defective in all its parts. Those evil times, when anarchy and jealousy distracted our State Governments, and clashing interests threatened to break our Federal Union, called all America to action. The people of this nation summoned their wisest and best men to meet in Convention, to form a Constitution which should promote the lasting welfare of our country, and secure the liberties their valor and wisdom had won. The difficulty of the task was fully equal to its importance.

In reviewing the histories of other Republics, the Convention saw that, like the splendid shows of a magic lantern, they had appeared and disappeared in almost the same moment of time: as had been observed by a celebrated writer, they rose like a rocket and fell like the stick. Although their existence had every where been transient, yet it had been protracted wherever the institutions of the country had excited any kind of veneration for its judicature. At Athens in particular, and indeed throughout Greece, the liberties of the people were for a season preserved by the respect felt towards the august Court of Areopagus. Notwithstanding the aspiring ambition of some of the States, the intrigues of powerful demagogues, and the general degeneracy of manners, yet, as long as this venerable judicature was respected, Greece continued free. As soon as it lost its influence the people lost their liberties. Taught, by these examples, the value of a good judiciary, the patriots who met at Philadelphia determined to establish one which should be independent of the Executive and Legislature, and possess the power of deciding rightfully and finally on conflicting claims between them. The Convention laid their hand upon this invaluable and protecting principle; in it they discovered what was essential to the security and duration of free States; what would prove the shield and palladium of our liberties; and they boldly said, notwithstanding the discouragement in other countries in past times, to efforts in favor of republicanism, our experiment shall not miscarry, for we will establish an independent Judiciary; we will create an asylum to secure the Government and protect the people in all the revolutions of opinion, and struggles of ambition and faction. They did establish an independent Judiciary. There is nothing, I think, more demonstrable than that the Convention meant the Judiciary to be a co-ordinate, and not a subordinate branch of the Government.

This is my settled opinion; but on a subject so momentous as this is, I am unwilling to be directed by the feeble lights of my own understanding, and as my judgment, at all times very fallible, is liable to err much where my anxieties are much excited, I have had recourse to other sources for the true meaning of this Constitution. During the throes and spasms, as they have been termed, which convulsed this nation prior to the late Presidential election, strong doubts were very strongly expressed whether the gentleman who now administers this Government was attached to it as it is. Shortly after his election, the Legislature of Rhode Island presented a congratulatory address, which our Chief Magistrate considered as soliciting some declaration of his opinions of the federal Constitution; and in his answer, deeming it fit to give them, he said: "The Constitution shall be administered by me, according to the safe and honest meaning contemplated by the plain understanding of the people at the time of its adoption; a meaning to be found in the explanations of those who advocated, not those who opposed it. These explanations are preserved in the publications of the time." To this high authority I appeal—to the honest meaning of the instrument; the plain understanding of its framers. I, like Mr. Jefferson, appeal to the opinions of those who were the friends of the Constitution at the time it was submitted to the States. Three of our most distinguished statesmen, who had much agency in framing this Constitution, finding that objections had been raised against its adoption, and that much of the hostility produced against it had resulted from a misunderstanding of some of its provisions, united in the patriotic work of explaining the true meaning of its framers. They published a series of papers, under the signature of *Publius*, which were afterwards republished in a book called the *Federalist*. This cotemporaneous exposition is what Mr. Jefferson must have adverted to, when he speaks of the publications of the time. From this very valuable work, for which we are indebted to Messrs. Hamilton, Madison, and Jay, I will take the liberty of reading some extracts, to which I solicit the attention of the Committee. In the seventy-eighth number we read:

"Good behaviour for the continuance in office of the judicial magistracy, is the most valuable of the modern improvements in the practice of Government. In a Republic it is a barrier to the encroachments and oppressions of the representative body. And it is the best expedient that can be devised in any Government to secure a steady, upright, and impartial administration of the laws. The Judiciary, in a Government where the departments of power are separate from each other, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution. It has no influence over the sword or the purse, and may truly be said to have neither force nor will, but merely judgment. The complete independence of the courts of justice is essential in a limited Constitution; one containing specified exceptions to the legislative authority; such as that it shall pass no *ex post facto* law, no bill of attainder, &c. Such limitations can be preserved in practice no other way than

FEBRUARY, 1802.

Judiciary System.

H. or R.

‘through the courts of justice, whose duty it must be to declare all acts manifestly contrary to the Constitution, void. Without this, all the reservations of particular rights or privileges of the States or the people would amount to nothing. Where the will of the Legislature declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the courts designed to be an intermediate body between the people and the Legislature, are to keep the latter within the limits assigned to their authority. The Convention acted wisely in establishing good behaviour as the tenure of judicial offices. This plan would have been inexcusably defective had it wanted this important feature of good government.’

The authority I have read proves to demonstration, what was the intention of the Convention on this subject; that it was to establish a Judiciary completely independent of the Executive and Legislature, and to have judges removable only by impeachment. This was not only the intention of the General Convention, but of the State conventions, when they adopted this Constitution. Nay, sir, had they not considered the judicial power to be co-ordinate with the other two great departments of Government, they never would have adopted the Constitution. I feel myself justified in making this declaration by the debates in the different State conventions. From those of the Virginia convention, I will read some extracts, to show what were there the opinions of the speakers of both political parties. The friends of the Constitution insisted that our federal judges would be independent of everything but their behaviour and their God. The opposers of the Constitution insisted that they would not be perfectly independent of the Legislature, because they might increase their salaries. Most affectionately attached to the sovereign rights of the States and the people, the opposers of the Constitution displayed all the suspicion of jealous lovers. They supposed the judges would not be completely independent, and insisted if they were not, there would soon be a concentration of all powers in the Legislature, and a perfect despotism in our country. Hence it appears, that both parties thought the judges ought to be beyond the reach of the Legislature, except by impeachment. The friends of the Constitution insisted they were so; the opposers feared they were not. Let us attend to the debates in the convention of Virginia.

General Marshall, the present Chief Justice, says:

“Can the Government of the United States go beyond those delegated powers? If they were to make a law, not warranted by any of the powers enumerated, it would be considered as an infringement of the Constitution, which they are to guard: they would not consider such a law as coming under their jurisdiction; they would declare it void.”

Mr. Grayson, who opposed the Constitution, we find saying:

“The judges will not be independent, because their salaries may be augmented. This is left open. What if you give six hundred pounds or one thousand pounds annually to a judge! It is but a trifling object, when, by that little money, you purchase the most invaluable

blessing that any country can enjoy. The judges are to defend the Constitution.”

Mr. Madison, in answer, says:

“I wished to insert a restraint on the augmentation, as well as diminution, of the compensation of the judges, but I was overruled; the business of the courts must increase. If there was no power to increase their pay, according to the increase of business, during the life of the judges, it might happen, that there would be such an accumulation of business as would reduce the pay to a most trivial consideration.”

Here we find Mr. Madison not using the words good behaviour, but says, “what we say was meant for good behaviour” during the life of the judges. The opinions of Mr. Madison I deem conclusive, as to the meaning of the words good behaviour; but I will read what was said by Mr. Nicholas, which is substantially the same. [Here Mr. R. read several extracts from the debates in the Virginia convention. Those quotations show that, in Virginia at least, the public wish and intention was to have an independent Judiciary.] Let us now see what was the opinion on this subject of the first Congress under the Constitution, when the first Judiciary bill was debated. Mr. Stone says: “The establishment of the courts is immutable.” Mr. Madison says: “The judges are to be removed only on impeachment, and conviction before Congress.” Mr. Gerry, who had been a member of the General Convention, expresses himself in this strong and unequivocal manner:

“The judges will be independent, and no power can remove them: they will be beyond the reach of the other powers of the Government; they will be unassailable, and cannot be affected but by the united voice of America, and that only by a change of Government.”

Here it is evident, Mr. Gerry supposed a project, like the present, could only be effected by the people, through the medium of a convention; he did not suppose it possible for Congress ever to grasp at this power. The same opinions were held by Mr. Lawrence and Mr. Smith. [Here Mr. R. read further extracts from the Congressional Debates.] In addition to those high authorities, permit me, Mr. Chairman, to read some parts of the lectures on the Judiciary of the United States, of the celebrated Judge Tucker, the present Professor of Law at the University of William and Mary, in Virginia. [Here Mr. R. read from Tucker's Lectures.] I wish gentlemen, who compare the official tenure of our judges with those of Great Britain, to attend to the wide distinction between their independence, as shown by the learned judge and professor, whose lectures I have cited; he shows that the judges in England have only a legal independence; while in America, they enjoy Constitutional independence.

The advocates of this bill say, the people could not have meant to establish an independent Judiciary, because a permanent body of men, beyond all control, would prove hostile to the liberties of the people. Sir, we do not contend for any such establishment; we do not wish for a Judiciary permanent and beyond control. No, sir, all we insist upon is, that the judges are liable to that sort

of control only which the Constitution establishes; that "good behaviour" is the tenure by which they hold their office, and that they cannot be removed from it but by impeachment. That the Judicial authority was never designed to depend upon the Executive and Legislative powers, but, in some sort, to balance them. That our federal judicature was meant to give to the Government a security to its justice against its power; it was contrived to be, as it were, something exterior to the State. The honorable gentleman from Vermont, (Mr. SMITH,) who preceded me, says, our construction of the Constitution is derived from implication. This is not the case, sir; we require no ingenuity, no sophistry, no metaphysical distinctions to bear us out in our construction. We resort to the plain meaning of the words of the Constitution. Knowing the Constitution would contain the seeds of its dissolution, should it contain articles liable to ambiguity, the Convention cautiously avoided obscurities; they selected as plain words as any in our language, to represent their intention of having an independent Judiciary; they used words that are intelligible to almost every capacity. Let us read them. "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." These are the words of the Constitution; and what words, sir, could have been found more express, more unequivocal in their meaning? Let us suppose, that, instead of being the Legislature, and instead of having the Constitution before us upon trial, and (as is the case I fear) being about to sign its death warrant, we were a convention, called by the people, to form a constitution; that we had determined to establish an independent Judiciary; to have judges removable only by impeachment; that, having decided this principle, it was referred to a committee to draught a clause conformably to the idea of having the Judiciary entirely independent of Executive and Legislative power; and that this service was assigned to the honorable gentleman from Virginia, (Mr. GILES;) could his ingenuity, could his knowledge of our language, furnish words to represent the intention of having an independent Judiciary, more appropriate, more unequivocal, more familiar, than the words used by the Convention, and which I have just read? They are explicit, simple, unqualified, and, at the same time, imperative. The understanding of the Convention, of the States, and of the people at large, was, that our Judiciary should be independent. They deemed this Constitutional check essential to the duration of the Government; and until the fourth day of last March, I believe the Judiciary was considered as sacred. The State Governments, and the people, and the friends of our Federal Union, revered it as the fortress and ark of their safety.

While this shield remains, it will be difficult to dissolve the ties which knit and bind the States together. As long as this buckler remains to the people, they cannot be liable to much or permanent oppression. The Government may be administered with indiscretion and with violence; offices may be bestowed exclusively upon those who

have no other merit than that of carrying votes at elections; the commerce of our country may be depressed by nonsensical theories, and public credit may suffer from bad intentions; but, so long as we may have an independent Judiciary, the great interests of the people will be safe. Neither the President nor the Legislature can violate their Constitutional rights. Any such attempt would be checked by the judges, who are designed by the Constitution to keep the different branches of the Government within the spheres of their respective orbits, and say, thus far you shall legislate, and no farther. Leave to the people an independent Judiciary, and they will prove that man is capable of governing himself; they will be saved from what has been the fate of all other Republics, and they will disprove the position that Governments of a Republican form cannot endure. I did hope, from the promises made by the honorable gentleman from Virginia, (Mr. GILES,) on a former occasion, when we attempted to postpone this bill, that he would have given it an unimpassioned consideration. If it were possible for him to dismiss party feelings, and argue any question upon its real merits, it was to be hoped he would have given a cool and deliberate consideration to this all important subject, and argued it upon the ground of Constitutionality. But, unmindful of his promise not to consider this a party question, the gentleman prefaced his observations with saying, he designed to make them personal.

His preliminary remarks were highly afflictive to myself and friends. We deprecated this course, but the gentleman's crimination must be deemed a justification of the recrimination which he has rendered necessary.

This is a painful task, and if gentlemen should feel themselves or their friends wounded by any of our observations, they must recollect the situation in which they have placed us, and that the necessity of defending ourselves has been imposed upon us by their attacks. In a speech which occupied two hours, ten minutes only of that time were given to a consideration of the constitutionality of this measure, and then the gentleman found it convenient to employ the rest of it in fulminating his anathemas against the past Administrations, and reiterating those invectives and censures which on all past occasions he has indulged himself in bestowing upon those who are no longer in power. Whether attacks are to be continued upon the past Administrations to divert the public eye from the present Administration, or whether they are calculated to raise a smoke, under the cover of which gentlemen may march unobserved to attack the vitals of our Constitution, is best known to themselves. The gentleman from Virginia has rendered homage to the Judiciary of Great Britain; acknowledges much of the prosperity of that nation to be produced by the independence of their judges; says ours are at least as independent, but that the doctrine of making them completely independent, is a monstrous one. Sir, there is no kind of analogy between the Governments of America and Great

FEBRUARY, 1802.

Judiciary System.

H. OF R.

Britain, and none between the situation of the judges in that and in this country. The people of England gained much, and an abundant source of oppression dried up, when they got their judges made independent of the Monarch, whose creatures they had been, and whose arbitrary measures they had been obliged to support. But, sir, it was impossible to make the judges a check upon Parliament, for nothing in that Government is independent of Parliament. In this country things are far different; we have a written Constitution; the people have given certain powers to the Executive, other defined powers to Congress, and delegated other powers to the Judiciary. But the gentleman from Virginia wishes to make Congress as powerful as the Parliament of Great Britain; he wants the Legislature in America to be (like the Parliament in England) without control; he wants to destroy that check which the people in their Constitution formed for us; he wants to prostrate that protecting principle which was never before known in a Republican Government, and for want of which all Republics have perished. In England the independence of the Judiciary, as far as it goes, I highly appreciate; but I venerate the independence of our judges (as designed by the people when they adopted the Constitution) because it is complete; in England it is not. There they have a legal independence; here a Constitutional one. Although the independence of the judges in England is partial, yet it has been productive of vast good; although they may be said to be in some measure still dependent on the Monarch, inasmuch as pensions and places are in his gift, yet it is well known the independence they do possess of the Crown prevents reasons of State from entering the courts, and that the royal will sinks into nothing and disappears at the seat of justice when opposed by the law. From many proofs of this fact, I beg leave to select the case of Mr. Wilkes, at the time of his second election, and when he had been outlawed: although the whole power of the Crown was most actively employed to crush this obnoxious subject, yet Lord Mansfield, and the whole bench of judges, declared the outlawry contrary to the principles of common law, and reversed it as being illegal. Permit me to read this case. [Here Mr. R. read an account of the proceedings, and the whole of Lord Mansfield's celebrated speech.] The Judiciary on this occasion we see checking arbitrary Executive measures, because they were independent of the Executive.

In America the Judicial power was designed as a Constitutional check upon both the Executive and Legislature; but gentlemen on the other side, deprecating all control, are for prostrating the check imposed by the people on their Representatives, and the destruction of which will make them omnipotent. The gentleman from Virginia says the Judicial power was not formed by the Constitution. I shall not be surprised by any declaration he may make about the meaning of the Constitution after this. Sir, the Judicial power is established by the Constitution equally with the Executive and Legislature. The organization of the

courts has been left to Congress, but the instrument under which we act has established the Judiciary, and has also assigned its duties. A charge has been made against us by the honorable gentleman, which I must deny; I plead not guilty to it, and say he is wholly mistaken. He has charged us with having changed with the times, and with having formerly advocated the extension of the powers of this House. Sir, this is not the case, *tempora mutantur sed non mutamur in illis*. Knowing how strongly disposed in Governments like ours the popular branch always is to grasp at illegitimate powers, we have in times past struggled hard for preserving to all the branches of the Government the powers delegated to them respectively by the Constitution. We have ever been watchful of Executive and Judicial rights, and defended them from the encroachments attempted by the Legislature. The gentleman from Virginia must permit me to call to his memory the course of conduct we pursued on a very memorable occasion, when he and his friends wished this House to arrogate Executive powers. I refer to the proceedings on a motion made by the honorable gentleman then his colleague, who is not now a member of this House, (Mr. Nicholas,) in the debate on the foreign intercourse bill. Mr. Nicholas said:

"I believe all governments like ours tend to produce a union and consolidation of all its parts in the Executive department, and the limitations of each other will be destroyed by Executive influence, unless there is a constant operation on the part of the Legislature to resist this overwhelming power. A representative Government may be made the most oppressive, and yet preserve all its Constitutional forms, and the Legislature shall appear to act upon its own discretion while that discretion shall have ceased. Where under our Government the Executive has an influence over the Legislature, the Executive is capable of carrying its views into effect in a manner superior to what can be done in a despotic monarchy. Mischiefs will be carried further, because the people will be inclined to submit to a Government of its own choosing. Monarchs cannot carry their oppression so far without resistance as Republics. Suppose Executive patronage had extended its influence into the Legislature, and that in consequence of a thirst for office majorities were formed in both branches of the Legislature devoted to the views of the Executive; where would be a check to objects hostile to the public good? In what branch of the Government would you look for it? Was it the Senate? Will you look to this House? The majorities are humble expectants of office. Where then will you find anything capable of controlling the overbearing influence of the Executive? It must be in small and feeble minorities, who, by their opposition, and attention to the interests of the people against arbitrary power, may rouse the people to a sense of their danger, and force the public sentiment to be respected; this, he conceived, would be the only check."

It hence appears, that those gentlemen have availed themselves of every occasion to extend the powers of Congress, and had their attempts been successful, we should ere this have had a consolidated Government; a kind of Government which the people of this country never wished to estab-

H. OF R.

Judiciary System.

FEBRUARY, 1802.

lish, and which is incompatible with their best rights. The gentleman from Virginia, whose argument I have quoted on the subject of the foreign intercourse bill, shows that those who were then in the minority extended their project so far as to count upon the minority to check the powers of the other departments of Government. Not so, sir, is the case with us; we do not count upon the efforts of feeble minorities; we do not wish to guard the Constitution by appeals to the people; we will do nothing calculated to produce insurrection; we do not want to protect the great charter of our rights by the bayonet. No, sir, we rely on honest and legitimate means of defence; we wish to check these gentlemen only with Constitutional checks. The people of America say in their Constitution, the Judiciary is designed as a check upon the Legislature and Executive, and as a barrier between the people and the Government. We say it is the sheet-anchor which will enable us to ride out the tornado and the tempest, and that if we part from it there is no safety left; that it is the only thing which can preserve us from the perilous lee-shore, the rocks and the quicksands, where all other Republics have perished. The Judiciary is the ballast of the national ship; throw it overboard and she must upset.

[Mr. GILES begged leave to explain. He said the gentleman had not quoted his arguments fairly; he never held the ideas ascribed to him; he certainly had not said the gentleman from South Carolina wished, on former occasions, to confide power to the popular branch of the Government. The gentleman from South Carolina, he believed, never wished this or any other popular branch of Government trusted with power.]

Mr. R. said, on a subject so momentous as this he would not trust to his memory; that he had taken down the words of the gentleman from Virginia; he certainly did not mean to misrepresent him, and was sorry he had supposed he had not quoted him fairly. It has been further said by this gentleman, that as the Judiciary was established for the benefit of the people, and is maintained by their money, the people must wish it put down when the proper authority tells us it has no duties to perform, and is a mere sinecure. I should be glad to know, sir, what is meant by the proper authority; are we to judge in this business, or is the Executive to judge for us? Sir, the Executive has seen fit to judge for us; but I believe he has gone beyond the line of his duty; and it would be more proper to call this document, now in my hand, an officious than an official act. However unpleasant it may be to gentlemen to call this an Executive measure, the great solicitude discovered by the President to get disembarassed of this most salutary Constitutional check, proves it his measure. It is not the measure of Congress nor of the people, but of the Executive. Not satisfied with calling the attention of Congress to this subject, he has, in his zeal to furnish arguments to those who support here his measures, given us a table showing what business had been done in the Federal courts prior to the late

organization of them. Had the former President furnished the late Congress with such a document as this, it would have been considered as abundant evidence of the inconvenient organization of the Federal courts, and furnished arguments for the change in the system which we did make. The result of this document is, that owing to the inconvenient arrangement of the system, suitors were deterred from entering the national courts. It shows how insufficient the provision for doing business was under the ancient system, and not how little there is to do. In a nation so great, and so growing in its greatness as ours is; among a people so commercial, so enterprising, and so attached to right as are the people of this country, there must be much law or there will be no justice. But had the late Executive furnished, unsolicited by Congress, such a document, the whole nation would have rung with censures. He would have been charged with considering Congress as a mere bureau; a committee or commune through which the Executive was to make his projects and his propensities felt. In this document, No. 8, we see the arm of the Executive raised against the Judiciary, and in his Message we hear him say it must fall. If he had contented himself with merely directing our attention to the law he wishes repealed, we might have obtained much more useful information for ourselves than what he has been pleased to give. If he had only adverted to this subject as one requiring the consideration of Congress, and they had wished for information, they would have called upon the proper officer for it, and have directed the Attorney General to furnish a table, showing what business had been done in the circuit courts since the time of their establishment. Such a document would have shown whether the existing law be beneficial or not. But the President, it seems, did not deem it wise to leave us the usual course of obtaining information; perhaps he had sufficient reasons for this; probably such a document as I have mentioned would have given a result not suited to Executive views. It would have shown that much important business had been done in the circuit courts, although they had but a short existence. Whether the Executive was incited to act with the promptitude he did, to prevent its being known of what vast utility the law is, it is not for me to say. I must be permitted, however, Mr. Chairman, to say, that having passed the last Summer in the Eastern States, I know that in that section of the Union the circuit court was fully occupied during its session. It is within my own knowledge, that at Portsmouth, in New Hampshire, there was much business done; at Boston there was a great deal of important business despatched, much to the satisfaction of suitors, and I learned from an authentic source that the court was a highly popular one. At Newport, in Rhode Island, there was so much business, that the court was under the necessity of holding evening sessions. In Vermont, I know that much business was done, and done much to the satisfaction of the public. From the gentlemen of the bar in New Jersey, we have a

FEBRUARY, 1802.

Judiciary System.

H. OF R.

memorial, stating that there had been many causes tried in the circuit court in that State. In Philadelphia, the gentlemen of the bar, of both political parties, have united in informing us that they deem the continuance of this court not only useful but necessary. From the Chamber of Commerce at New York, and from the merchants in Philadelphia, we have received petitions, praying for a continuance of the law, which has been denounced, and which the Executive thinks unnecessary. These facts make a mass of high evidence, which on ordinary occasions would weigh much. But I hear it will not preserve the law in question. It has been frowned upon from high authority, and I fear it must perish.

Sir, this document, No. 8, is as little calculated to serve the purposes of gentlemen who appeal to it, as is the document produced some days past by a gentleman from Virginia. (Mr. THOMPSON;) he gave us a record from the court of chancery, in Virginia, to show how much business there is done in that court, where, he says, there is but one judge, and his salary is only one thousand five hundred dollars. The honorable gentleman says, in Virginia they have but one chancellor, with the salary of one thousand five hundred dollars, who renders as much service as all the national courts; and to prove this, he reads to us a certificate from the clerk of the court of chancery, stating, that on the chancery docket there were two thousand six hundred and twenty-seven causes. This paper serves to show, not what business is done, but what a mass of business there is undone, and which the court is incompetent to dismiss. What a frightful picture has he given of the judicature of his own State! How alarming must it be to foreigners, and the citizens of other States, who may have causes depending in Virginia! What chance can a citizen of South Carolina, Massachusetts, or elsewhere, have of obtaining justice before the lapse of many years, if the history given by the gentleman from Virginia be correct! Should a citizen of another State be a suitor in Virginia, it is competent to the citizen of that State to carry the cause into the court of chancery, where a mass of business presents itself to his view, and he finds two thousand six hundred causes must be dismissed before his can be heard. Where would the citizens of other States, having debts in Virginia, attempt their recovery? They would seek justice, sir, in the Federal circuit court, which gentlemen now are endeavoring to annihilate, and not in the State courts, which may be more properly called a bed of justice than a court of justice, if justice sleeps there, as the gentleman has represented. He also states, that State justice is cheaper than national justice. I do not believe this a correct position. I am very willing to enter into a comparison, but must exclude from it Virginia, because he has shown that justice is denied there, it being greatly delayed. I did hope, Mr. Chairman, the motion made before I got up, for the rising of the Committee, would have obtained, and should not have commenced offering my observations at so late an hour, had there not been a loud call for the ques-

tion; but as I am unwilling to abuse the patience of the Committee, as I have detained them I find more than two hours, and have not yet offered half of the observations I am desirous of submitting, I will suspend them for the present and continue them to-morrow, or will now proceed, as shall be most agreeable to the Committee.

On motion of Mr. S. SMITH the Committee rose.

THURSDAY, February 25.

A memorial of John Gardiner, an alien, now an inhabitant of the City of Washington, was presented to the House and read, stating that the memorialist has brought his family into the United States, with an intention to reside permanently therein; and praying, that, therefore, he may be enabled to obtain a patent for discovery of a method of constructing dry docks to repair and build ships in, on navigable waters, where the rise and fall of tides is inconsiderable.—Referred.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom were referred, on the ninth instant, the petitions of John Caldwell and others, merchants and traders in the State of Connecticut, and of sundry merchants and inhabitants of the town of Plymouth, in the State of Massachusetts, reported a bill for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of New-castle Island; for erecting a light-house on Lynde's Point, and for other purposes; which was read twice and committed to a Committee of the whole House on Monday next.

JUDICIARY SYSTEM.

The House then went into a Committee on the bill, sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. RUTLEDGE.—I beg leave, Mr. Chairman, to proffer my thanks to the Committee for the indulgence with which they favored me yesterday; and at the same time to acknowledge the respect excited by the politeness of the honorable gentleman from Maryland, who moved for its rising. In the course of the observations I yesterday offered, I endeavored to show that it was the intention of the Convention to make our judges independent of both Executive and Legislative power; that this was the acknowledged understanding of all the political writers of that time; the belief of the State Conventions, and of the first Congress, when they organized our Judicial system. If I have been successful in my attempt to establish this position, and if (what I suppose cannot be denied) it be true in jurisprudence that whenever power is given specially to any branch of Government, and the tenure by which it is to be exercised be specially defined, that no other, by virtue of general powers, can rightfully intrude into the trust; then I presume it must follow, of consequence, that the present intermeddling of Congress with the Judicial department is a

downright usurpation, and that its effect will be the concentration of all power in one body, which is the true definition of despotism. As, sir, every thing depends upon the fair construction which this article in the Constitution respecting the Judiciary is susceptible of, I must again read it. [Here Mr. R. read several clauses of the Constitution.] Some of the clauses we see are directory and others prohibitory. Now, sir, I beg to be informed of what avail are your prohibitory clauses, if there be no power to check Congress and the President from doing what the Constitution has prohibited them from doing? Those prohibitory regulations were designed for the safety of the State governments, and the liberties of the people. But establish what is this day the ministerial doctrine, and your prohibitory clauses are no longer barriers against the ambition or the will of the National Government; it becomes supreme and is without control. In looking over those prohibitory clauses, as the representative of South Carolina, my eye turns with no inconsiderable degree of jealousy and anxiety to the ninth section of the first article, which declares—[Here Mr. R. read the article respecting migration before the year 1808.]

I know this clause was meant to refer to the importation of Africans only, but there are gentlemen who insist that it has a general reference, and was designed to prohibit our inhibiting migration as well from Europe as any where else. It is in the recollection of many gentlemen who now hear me, that in discussing the alien bill, this clause in the Constitution was shown to us, and we were told it was a bar to the measure. And an honorable gentleman from Georgia, then a member of this House, and now a Senator of the United States, (and who had been a member of the Convention,) told us very gravely, he never considered this prohibition as relating to the importation of slaves. I call upon gentlemen from the Southern States to look well to this business. If they persevere in frittering away the honest meaning of the Constitution by their forced implications, this clause is not worth a rush; is a mere dead letter; and yet, without having it in the Constitution, I know the members from South Carolina would never have signed this instrument, nor would the convention of that State have adopted it. My friend from Delaware, standing on this vantage ground, says to our opponents, Here I throw the gauntlet, and demand of you how you will extricate yourselves from the dilemma in which you will be placed, should Congress pass any such acts as are prohibited by the Constitution? The judges are sworn to obey the Constitution, which limits the powers of Congress, and says, they shall not pass a bill of attainder or *ex post facto* law; they shall not tax articles exported from any State, and has other prohibitory regulations. Well, sir, suppose Congress should pass an *ex post facto* law, or legislate upon any other subject which is prohibited to them, where are the people of this country to seek redress? Who are to decide between the Constitution and the acts of Congress? Who are to pronounce on

the laws? Who will declare whether they be unconstitutional? Gentlemen have not answered this pertinent inquiry. Sir, they cannot answer it satisfactorily to the people of this country. It is a source of much gratification to me to know, that my sentiments on this subject, as they relate to the constitutionality of it, are in unison with those of the wisest and best men in my native State. The Judicial system had proved so inconvenient there, as to render a new organization of it necessary some years past. There were gentlemen in the Legislature as anxious to send from the bench some of the judges as gentlemen here are to dismiss our federal judges. Personal animosities existed there as well as here, though not to so great an extent; but it was the opinion of a large majority of the South Carolina Legislature, that as the Constitution declares "the judges shall hold their offices during good behaviour," the office could not be taken from them, the measure was abandoned, and the wise and cautious course pursued, which we wish gentlemen here to follow: the system was not abolished, but modified and extended; the judges had new duties assigned to them, and their number was increased, but no judge was deprived of his office. In South Carolina they have a court of chancery, consisting of three chancellors, and the law establishing it requires the presence of two judges to hold a court. During a recess of the Legislature one of the chancellors resigned and another died. The functions of this court of consequence became suspended. All the business pending in it was put to sleep. The public prints were immediately filled with projects for destroying the court, which had been denounced as unnecessary. As the citizens of the western part of the State had not participated much in the benefits derived from the court of chancery, many of the most influential of them deemed it of little utility. The opposition assumed so formidable an aspect as to determine the Governor (who exercises the power of appointing judges during the recess of the Legislature) not to make any appointment, believing the court would be abolished. When the Legislature met, an effort was made to abolish the court; but a large majority giving to the Constitution the honest meaning of its framers, considered the judges as having a life estate in their offices, provided they behaved well; and the vacancies on the chancery bench were immediately supplied.

That the national Judiciary Establishment is comparatively more costly than are the State Judiciaries, is far from being the case, I believe. It may be so in Virginia, where they have one chancellor, with little salary and much business, but it is not so in other States. In South Carolina, we have six judges at common law, at six hundred pounds sterling a year each; three chancellors at five hundred pounds each; which, together with the salaries and fees of office of the attorney general, master in chancery, solicitors, clerks, and sheriffs, amount to six thousand two hundred pounds sterling. And yet, sir, justice, I believe is no where cheaper than in South Carolina. By the judicious structure of her Judiciary system,

FEBRUARY, 1802.

Judiciary System.

H. OF R.

the streams of justice are diffused over the whole State, and every man is completely protected in his life, liberty, property, and reputation. The courts are almost constantly in session. The judges are gentlemen of high talents, integrity, and strict impartiality; and every one who goes into the court of that State, not only obtains ample justice, but obtains it promptly; this, sir, is what I call cheap justice. The gentleman from Virginia has seen fit to notice the law which laid a direct tax, and said it was imposed when we knew the Administration of this Government was soon to pass from those then in power, and was resorted to as a means of extending Executive patronage, and to make provision for the friends of an expiring Administration. Can the honorable gentlemen be serious in all this? Does he remember when we passed this law? It was in 1798, when I will be bold to say, the Administration enjoyed the highest degree of popular favor. In no popular Government, perhaps, was an Administration more popular than was the former Administration, at the time this tax was laid. Sir, this law had no connexion with personal or party considerations. Like all the measures of the past Administration, it was designed to promote the public good. Had we, like our opponents, consulted the caprices and prejudices, and not the real interests of our constituents; had we been merely attentive to popular favor, we should not have passed this law. At the crisis it was passed, the public good demanded it, and we were regardless of every other consideration. A nation that had lighted up the flame of war in every corner of Europe, that was prostrating the liberties of every free people, and subverting the Government of every country, saw fit to menace us. Told us for the preservation of our peace and independence we must pay tribute. This degrading measure was scornfully rejected by our Administration; they said, if we must fall, we will fall after a struggle; and our citizens prepared themselves for war with alacrity, and regarded every sacrifice as inconsiderable, compared with the great sacrifice of our independence. With this prospect of immediate war, we should have acted not only unwisely but treacherously, had we trusted for public income to the revenue derived from trade. Had our trade been destroyed, there would have been a complete destitution of revenue, and to place the means of national defence as far beyond the reach of contingency as possible we imposed the direct tax. We knew this law would prove arms and ammunition to those who were inventing all the falsehood credulity could swallow, and who were busily employed in misrepresenting and calumniating the conduct of the Government. We did suppose they might make this law their artillery to batter down the Administration; but we were not deterred from our honest purposes by this expectation; a change of men, when compared with a change of government, weighed with our minds as dust does in the balance; our measures did not aim at popularity, and we were just to our country, regardless of party consequences.

At this early period, says the gentleman, it was to have been calculated what would be the result of the Presidential election. Sir, those must have been gifted with second sight, they must have been prophets indeed, who could have then foretold how the election would issue; the result was as doubtful as any event could be, till within a few days of the election. It is recollected that everything depended upon the South Carolina vote; all the gentlemen in nomination went there with an equal number of votes; the anxiety displayed at the time by the gentlemen here from Virginia, proved they then deemed it doubtful how the election would terminate. Indeed, sir, nothing could have been more doubtful, and I believe it is fully known to the ministerial side of this House, that it depended upon one of the gentlemen nominated, who had not the Carolina votes, to have obtained them, and produced to the election a different result; but his correct mind was obnoxious to any intrigue; it would not descend to any compromise, and this honorable man knew that no station could be honorable to him unless honorably obtained. In the very wide range which the gentleman from Virginia has permitted himself to take, he has been pleased to notice the conduct of the late Congress when they were occupied in the election of a President of the United States, and he has said we were then "pushing forward to immolate the Constitution of our country." What does all this mean, sir? What, sir! because we, of the two gentlemen who had from the electors an equal number of votes, did not prefer him who was from Virginia, are we to be charged with an immolation of our Constitution? Sir, the gentleman from Virginia was not a member of the last Congress, and lest he should not know the history of the transaction to which he alludes, I will give it.

The Electors chosen in the different States gave the same number of votes for Thomas Jefferson and Aaron Burr; there being a tie, it devolved, by the direction of the Constitution, upon the House of Representatives to make an election. We sincerely believed that Mr. Burr was the best and the most fit man to be President, and we accordingly voted for him; we continued to vote for him six and thirty times; we were anxious to have him elected, and we deprecated the election of the other candidate; but when we found gentlemen were determined not to have the candidate from New York, and said they would have him from Virginia President, or they would have no President, we, who venerated our Constitution too sacredly to do anything which should hazard the loss of it, yielded. We believed Mr. Jefferson radically and on principle hostile to the National Constitution; we believed some of the most important features in it obnoxious to him; we believed him desirous of destroying the independence of our Judiciary; we believed him opposed to the Senate as now organized, and we believed him destitute of that degree of energy necessary to maintain the general liberty of the people of the United States. With these impressions deep upon our minds, we should have been traitors to our

country had we voted for the gentleman from Virginia, as long as there was any prospect left to us of elevating the gentleman from New York; but when we found the object of our preference was so obnoxious to gentlemen on the other side, that they would hazard the having of no President rather than have him, we ceased our opposition. And this is what the honorable member from Virginia has been pleased to call "pushing forward to immolate the Constitution."

I regret, Mr. Chairman, being compelled to mention names and say anything of a personal nature, but I am obliged to do it in pursuing the gentleman from Virginia, who in his extraordinary course has not only mentioned the names of gentlemen, but ascribed unworthy motives for their conduct. He has said Mr. Read and Mr. Green voted for the law under which they got appointments. Although I have abundant proof that neither of these gentlemen solicited their offices, that they were given spontaneously, and without being expected, yet I will merely answer this observation by mentioning what is very generally known to all gentlemen who have been of late in the councils of the nation; it is, that it was the invariable practice of the former Executive to appoint gentlemen to office without previously advising with them. It is well known that under the law gentlemen are now endeavoring to repeal, Mr. Jay was appointed Chief Justice, and about the same time several gentlemen in this House were appointed to some of the most honorable stations under our Government; the Executive's intention, it is well known, had not been previously notified to them; it is well known they all declined accepting the places proffered to them. Permit me, sir, to give a brief history of the case of Mr. Green, on which the gentleman from Virginia has dwelt so much.

The district judge in Rhode Island was appointed circuit judge, and Mr. Green was appointed district judge. On the fourth day of March, Mr. Green took his seat in the Senate; the friends of the Administration objected to his keeping it; they said he was a judge, as appeared by the journals of the Senate; they here made a complete recognition of his appointment as judge, and he vacated his seat. After getting home he received his commission, in which the blanks had been filled up with the words circuit judge, instead of district judge. Mr. Green enclosed his commission to the Executive, in a letter most profoundly respectful, and requested the errors of the clerk in the Department of State might be corrected, and his commission made to conform to the appointment, as recorded on the Senatorial journal. To this letter, which was in highly respectful terms, the President would not deign to have any answer given; he pocketed Mr. Green's commission, and placed another gentleman in his office. This is a history of the appointment of Mr. Green, and the manner in which the President "corrected the procedure." To my friend from New York, (Mr. MORRIS,) who some days past adverted to the President's system of persecution, the honorable gentleman from Virginia

says he is so ignorant of the existence of any such system that he cannot conceive what is alluded to; and my friend from North Carolina, (Mr. HENDERSON,) who spoke of the destructive spirit which had mounted in the whirlwind and now directs the storm against one-half of the community, he charges with having winged his flight into the regions of fancy; and tells us the spirit he sees is a mere spirit, thin as air, and without real form or substance. Sir, my honorable friend from North Carolina is under no magical delusion; the spirit he noticed is a gigantic spirit, and with a giant's size unites a giant's appetite: it attacks the independence of mind, and violates the right of opinion; it establishes a mental tyranny; tampers with integrity and poisons morals; it has arraigned one-half of the community against the other; it denounces as a "*sect*" in our country all those whom the illustrious WASHINGTON took to his confidence and invested with his favor. It establishes boards of inquisition to know how men who are in office voted at the last election, and if they did not then subserve the views of the ruling party they are stripped of their offices. Many of the proscribed are veterans of '76. They wasted their youth and their substance in fighting our Revolutionary battles, and as a small reward for great services, they had offices given them by the distinguished WASHINGTON. Most of those who had been appointed by him, this destroying spirit has turned adrift, and to those who are not yet destroyed, it gives (in the New Haven reply) the promise of Polypheme to Ulysses, and says, "you shall be devoured last." This is the spirit, sir, against which my friend from North Carolina has raised his voice, and if the gentleman from Virginia will appeal to the wives and children of ninety or a hundred meritorious men who have been hurled from office to make way for those who are willing, without examination, to yield a blind support to ministerial measures; to sing hosannas to the President, and bend to his will as the osier does to the breeze; I say, sir, if he will appeal to the wives and children of those gentlemen, who have been degraded, disgraced, and reduced to want, as far as it was in the power of the Executive to degrade and reduce them, they will tell him this is a spirit of substance, and not thin as air. Fatigued by its labors, we now see this great spirit resting on its club; it no longer dispatches its victims as heretofore, by batches, but, as strength and appetite return, proscriptions are continued, though in detail. Since the meeting of Congress, there have been many dismissals; in the last week only, I heard of that of a meritorious officer, who is an aged and war-worn soldier. To this gentleman, who had grown grey in the service of his country, General WASHINGTON gave an office which might cheer the evening of his days; the duties of it were discharged with industry and fidelity. He has been a useful citizen; he has thirteen children, and most of them are daughters—the oldest has scarcely numbered eighteen years, and the youngest not more than eight months. This gentleman has been placed on the proscribed list; not, sir, because he

FEBRUARY, 1802.

Judiciary System.

H. OF R.

had been negligent of any one of his duties, but because some of those hands which (as it has been modestly said) burst open the doors of honor and confidence, were widely stretched out for rewards; to give them loaves and fishes they have been taken from the support of this numerous and lovely family. Sir, there not only exists, as my friend from North Carolina tells us, a great and destroying spirit, but there are also subordinate spirits employed in this goodly work of prescription; the master-spirit, unable to take a view of the whole ground, has its under spirits; these minor spirits, within the spheres of their respective departments, are singling out objects of Executive vengeance. By some of the papers which lie before me on my desk, I see the Postmaster General is busily employed; every postmaster, and every little deputy-postmaster, who cannot prove his claims to Executive favor by proofs of conformity to the orthodox faith of the day, is considered as a heretic. In the persecution of the Postmaster General, of those who are not devoted to the party, I observe something truly ridiculous. Thinking, I suppose, that public opinion would demand some justification of this conduct, he undertakes to assign reasons for it. I observe in the paper of this morning the Postmaster General has removed one of his deputies at Augusta, in Georgia, and makes a sort of an apology for it. He tells the man it is because he is a printer, and the occupations are incompatible. This gentleman writes to him that he is not a printer, and that he never was concerned, directly nor indirectly, in the publishing of a paper. It seems, then, the Postmaster General was mistaken, but the deputy lost his office. This lesson will prevent future explanations, probably, by the Postmaster General. It will be more convenient for him to wrap himself up in Executive infallibility and insist "the King can do no wrong." The gentleman from Virginia has noticed the Sedition act, and says, the present Executive requires no such shield for his protection; that he wants no artificial means of defence; yet, in the very same breath, we hear the gentleman complaining of defamatory scribblers, and of the profligacy of our presses. It does not become the honorable gentleman to complain of the public prints. It is well recollected, that when heretofore we endeavored to check the licentiousness of the press, he and his friends insisted that its licentiousness and liberty were so closely allied, that should we attempt to touch this vein, we would run the hazard of giving a mortal wound to the great arteries of the body politic. This was formerly the language of gentlemen who are now, it seems, suffering from the effects of their past policy. They are now experiencing what they might have learned from a good old book, "He who soweth the wind shall reap the whirlwind." It did not become them (to use our Saviour's expression) to "cast the first stone." I shall here, sir, close my observations in answer to those offered by the gentleman of Virginia, to whom I have had occasion to refer so often. Permit me, however, before taking my leave of him, to express my

sorrow that he deemed it necessary, in ranging the wide field he occupied, to visit Mount Vernon, and attempt to disturb the ashes of our political father. This circumstance was not required to prove that pre-eminence is often obnoxious; "and why must Aristides be called more just than others?" was asked by the envious Athenian who voted for his banishment. Another honorable gentleman from Virginia asks my friend from North Carolina why he now mourns and sighs over the Constitution, which he last year assisted to violate, and insists upon it we did wound the Constitution in putting down the two courts of Kentucky and Tennessee? Sir, it has been satisfactorily shown by my learned friend from Delaware that the offices were not, in those two instances, destroyed, but modified, and that we did not take their offices from the judges, but merely assigned them new duties. This, however, the gentleman from Virginia calls wounding the Constitution, and proceeds to say, you did destroy two courts, and we will destroy sixteen. What, sir, will he tell us that our hands are red with the blood of the Constitution, to justify his imbruing his? Because he thinks we then violated the Constitution, will he now murder it? Sir, it was by sounding the alarm about meditated violations of the Constitution, and by gross misrepresentations of our intentions, and reiterated charges of not respecting the Constitution, that public opinion was vitiated, the public mind misled, and the administration of our Government placed where it now is. But almost in the moment of changing, when the present Administration is in its gristle, it assumes the attitude of a gladiator, attacks the Judiciary, violates the rights of the judges, and says to us, *you set the example*. Sir, had we set them the example, it was a bad one, and it does not become them to follow it; but we never gave any such examples; we always revered the Judiciary as the bulwark of the Constitution, and considered the rights of the judges as the rights of all the people of America. It is said by the gentleman from Virginia, that our devotion to the Judiciary establishment makes us wince at any attempts to strip off some of its superfluous and expensive trappings, and that we will not part with the Corinthian and Composite pillars which have been added for its decoration.

Sir, the Judiciary is, in the fabric of the Constitution, not a Corinthian pillar, not any ornament added by Congress. It is, sir, the grand Doric column; one of three foundation pillars, formed, not by Congress, but by the people themselves; it binds together the abutment, is laid in the foundation of the fabric of our Government, and if you demolish it, the grand arch itself will totter and the whole be endangered. We are asked by the gentleman from Virginia if the people want judges to protect them? Yes, sir, in popular governments Constitutional checks are necessary for their preservation; the people want to be protected against themselves; no man is so absurd as to suppose the people collectively will consent to the prostration of their liberties; but if they be

H. OF R.

Judiciary System.

FEBRUARY, 1802.

not shielded by some Constitutional checks they will suffer them to be destroyed; to be destroyed by demagogues, who filch the confidence of the people by pretending to be their friends; demagogues who, at the time they are soothing and cajoling the people, with bland and captivating speeches, are forging chains for them; demagogues who carry daggers in their hearts, and seductive smiles in their hypocritical faces; who are dooming the people to despotism, when they profess to be exclusively the friends of the people. Against such designs and artifices were our Constitutional checks made to preserve the people of this country. Will gentlemen look back to the histories of other countries, and then tell us the people here have nothing to apprehend from themselves? Who, sir, proved fatal to the liberties of Rome? The courtier of the people; one who professed to be "the man of the people," who had willed his fortune to the people, and had exposed his will to the public eye; a man who, when a Crown was proffered to him, shrunk from the offer, and affectedly said, it did not come from the people. It was Julius Cæsar who prostrated the liberties of Rome; and yet Cæsar professed to be the friend of Rome, to be in fact the people. Who was it, that, in England, destroyed the Representative Government, and concentrated all its powers in his own hands? One who styled himself the man of the people; who was plain, nay studiously negligent in his dress; disdaining to call himself Mister, it was plain unassuming Oliver; Oliver Cromwell, the friend of the people, the protector of the Commonwealth. The gentleman from Virginia says he would rather live under a despot than a Government where the judges are as independent as we would wish them to be. Had I his propensities, I, like him, would fold my arms and look with indifference at this attack upon the Constitution. It has been my fortune, Mr. Chairman, to have visited countries governed by despots. Warned by the suffering of the people I have seen there, I am zealous to avoid anything which may establish a despotism here. It is because I am a republican in principle and by birth, and because I love a republican form of Government and none other, that I wish to keep our Constitution unchanged. Independent judges, at the same time that they are useful to the people, are harmless to them. The judges cannot impose taxes; they cannot raise armies; they cannot equip fleets; they cannot enter into foreign alliances: these are powers which are exercised without control by despots; and as the gentleman from Virginia does not hold despots in abhorrence, he and I can never agree in our opinions on Government.

Whether another honorable gentleman from Virginia (Mr. RANDOLPH) has derived all the service from his sling and his stone he had expected, or whether he feels acquitted of his promise, and now thinks himself capable of prostrating the Goliath of this House, armed cap-a-pie with the Constitution of his country, I cannot conjecture. Whether he has discovered the skill and the prowess of David, or whether he is likened to him only by the weapons he wars with, it is for the Com-

mittee to judge; for myself I must say, that his high promises had excited expectations which in me have not been realized, and when the gentleman sat down I was sorry to find my objections to the bill on your table undiminished. I say sorry, for I can lay my hand upon my heart, and in the fullness of sincerity declare, there is nothing I desire more anxiously than to be convinced by gentlemen that this measure is not unconstitutional. It is not competent for us to decide where the power of judging shall be placed, as is supposed by the gentleman from Virginia, who says the only question is where this power shall be placed. Sir, the true question is where was this power placed by the Constitution? And the honest answer will be, that it was obtained to the Judiciary by the will of the people; their power is paramount to that of the Legislature, and revocable only by the authority that gave it. In deprecating the adoption in this country of the common law of England, which was brought to it by our ancestors, and the principles of which are the fundamental maxims of our liberties, the gentleman from Virginia has attempted to show the inconveniences resulting from its uncertain rules, and has noticed the case of Williams, which occurred in Connecticut. Sir, I am surprised that a gentleman so correct as he generally is, should have fallen into the inaccuracy he has. The case of Williams is a notorious one, and it was not a prosecution at common law. The history of it is, that when General Pinckney was at Paris he learned that some of the privateers which were then cruising against the American commerce were commanded by Americans. As soon as this information reached Congress, they passed a law to prohibit our citizens from going into the service of any of the belligerent Powers. Williams continued to command a French privateer and he had captured many of our vessels; he was afterwards brought into Connecticut, and there tried and punished; not under the common law, as the gentleman from Virginia supposed, but under our statute, under the law we passed in 1798.

The gentleman has asked whether, if we had created an army of judges, and given them monstrous high salaries, it would not be right to repeal the law; that if the power exists to repeal any law which might have passed on this subject, it might not now be used? and has been pleased to say, we would have created more judges and given them higher salaries, if we had not wanted nerves; and tells my honorable and learned friend from Delaware that we were restrained by the same feebleness of nerve which induced us at the Presidential election to put blank votes into the ballot box. Sir, my friend from Delaware does want that sort of nerve that some gentlemen now discover. Although he is as brave as he is wise, yet in living without fear he will live without reproach, and never make himself liable to the charge of prostrating the Constitution of his country; for such a work it is true he has no nerve. The observations of one honorable gentleman from Virginia (Mr. GILES) being now reiterated by another respecting the course of conduct we pur-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

sued at the Presidential election, shows that time has not abated the resentment of Virginia which we excited by our not voting for the Virginia candidate. Permit me here to declare, sir, that in reviewing all my public conduct, I can discover no one act of which I am more satisfied than my having put a blank vote into the ballot-box. Much has been said on this subject. My friend from Delaware and myself have been denounced by the jacobins of the country; at their civic feasts, and in their drunken frolics, we have been noticed. European renegadoes, who have left their ears on the whipping posts of their respective countries, or who have come to this country to save their ears, have endeavored to hang out terrors to us in the public prints; nay, sir, circular letters have been diffused through the country, charging us with the intention of preventing at one time the election of a President, and at another with the design of defeating the vote of the Electors and making a President by law. This was all a calumny, and as it relates to the South Carolina delegation, I declare they had no intention of defeating the public will; they never heard of any project for making a President by law; they had but one object in view, which they pursued steadily as long as there was any prospect of attaining it. The gentleman from Virginia and the gentleman from New York had an equal number of votes; we preferred the latter; we voted for him more than thirty times, but when we found our opponents would not unite with us, and seemed obstinately determined to hazard the loss of the Constitution rather than join us, we ceased to vote; we told them we cannot vote with you, but by ceasing to vote, by using blank votes, we will give effect to your votes; we will not choose, but we will suffer you to choose. Surely, Mr. Chairman, there was nothing in all this which had any aspect towards defeating the public will. Why I did not prefer the gentleman who ultimately was preferred, has already been mentioned. This is a subject on which I did not expect to be called upon to explain; but the gentlemen from Virginia have called, and it was necessary to answer. Permit me to state, also, that besides the objections common to my friend from Delaware and myself, there was a strong one which I felt with peculiar force. It resulted from a firm belief that the gentleman in question held opinions respecting a certain description of property in my State, which, should they obtain generally, would endanger it, and indeed lessen the value of every other. Following the example set by his colleague, the gentleman from Virginia has bestowed much censure on the past Administration, and made it a serious charge against them, having appointed under this law a gentleman of Maryland, who he says was not with us formerly, but unfurled his standard in the service of his King, and fought against his countrymen, whom he then deemed rebels. I did not expect, Mr. Chairman, to hear this observation from one of the friends of the Executive. Since the fourth of March last, I thought philosophy had thrown her mantle over all that had passed; that sins were to be forgotten and forgiven,

and to prove the sincerity of this forgiving spirit, sinners were to be distinguished by Executive favors. One would have thought so in reviewing Executive conduct; where persons had been imprisoned and fined under our laws, they we know were released; where fines had actually been paid, the officers of Government had been ordered to return them, and not only Tories had been appointed to office, but old Tories, rank old Tories, who had been banished. The present collector of Philadelphia, for the internal revenue, has been appointed since the fourth of March last, and although he never, like the gentleman alluded to, shivered lances in the service of his King, yet he was actively employed in the more safe service of giving information to the British Generals, and marching before Sir William Howe, decorated with laurels, conducted him into the metropolis of his native State. Sir, there are many instances of this kind. Have gentlemen forgotten the young Englishman who was so busily employed here last Winter during the Presidential election, that in seeing him one would really have supposed him not only a member of this House, but, like him of Tennessee, holding an entire vote at his command? This youngster was sent out here by some merchants in England to collect debts due to them in this country, and his father, whose Tory principles carried him from America early in the Revolution, is now subsisting on a royal pension; and this young man has been appointed our Consul at London, and the former consul, a native and staunch American, whose conduct had been approved by merchants generally, has been turned out to create a vacancy. The gentleman from Virginia has repeated the observation of his colleague, that the people are capable of taking care of their own rights, and do not want a corps of judges to protect them. Human nature is the same everywhere, and man is precisely the same sort of being in the New World that he is in the Old. The citizens of other Republics were as wise and valiant and far more powerful than we are. The gentleman from Virginia knows full well, that wherever the Roman standard was unfurled, its motto, "*Senatus Populusque Romani*," proclaimed to a conquered world that they were governed by the Senate and the people of Rome. But now, sir, the Roman lazzaroni, who, crouching at the gates of his Prince's palaces, begs the offals of his kitchen, would never know that his ancestors had been free, nor that the people had counted for anything in Rome, or that Rome ever had her Senate; did he not read it on the broken friezes and broken columns of the ruined temples, whose fragments now lie scattered over the Roman forum!

Sir, the mournful histories of the Republics of Rome and Greece are not the only beacons which warn us of the danger of instability and innovation. All Europe was once free. But where now is the Diet of Sweden? Where are the States of Holland and Portugal, and the Republics of Switzerland and Italy? The people of those countries were once free and happy, but their Governments, for want of some protecting check, some

inherent principle to defend themselves, have all been subverted; they have all travelled the same road; it is as plain as a turnpike; it is pointed out by the ruins of other Republics; everywhere the same causes have produced the same effects. The Government gets into the hands of theorists, and they make inroads on the Constitution, perhaps with honest views; but these innovations are precedents to sanction subsequent innovations of men with bad views, and despotism succeeds to anarchy. This is what we learn from every page of history. Let us profit by these monitions; let us take experience as our guide. We all have one common interest in this Constitution, let us then leave it untouched; if you touch, others will ruin it; what has happened elsewhere will happen here: these gentlemen are not masons in politics and government; they cannot build up again; they are mere sappers and miners, and if they pull down this mild Government, those who come after them will build up a despotic one. If you will not reject this measure, postpone it for a year; the people want no change of our Constitution, give them but time, and my life on it they will say so. The President will respect public opinion; give time for its expression, and the President will subordinate his desire to destroy, to theirs to preserve. Is there no ground upon which gentlemen will meet us and compromise? If the remnant of the Army is disliked, we will abolish it; if a further reduction of our little Navy is desired, we will reduce it; we will join in abolishing the internal revenue; sir, indeed, there is no sacrifice we will not make to prevent the sacrifice of this Constitution. Gentlemen say the Constitution will live. Sir, it may last our time, but it will drag out a miserable existence after receiving this wound; it will be mortal; inflict it, and you doom it to ruin: like the best and most lovely part of God's creation, violate, and you destroy it. As has been observed in the House above, by a countryman and honorable friend of mine, it will be with this Constitution as with a confined fluid, if a drop of it escapes, the leak through which it steals will soon become a breach by which the whole will pass away. This bill is an egg which will produce a brood of mortal consequences. Although the blow aimed at the Constitution will not immediately destroy, the injurious effects will be immediately felt; it will soon prostrate public confidence; it will immediately depreciate the value of public property. Who will buy your lands? Who will open your Western forests? Who will build upon the hills and cultivate the valleys which here surround us? He must be a speculator indeed, and his purse must overflow, who would buy your Western lands and city lots, if there be no independent tribunals where the validity of your titles will be confirmed. Have gentlemen forgot the sales of public lands made in France? The national domain was sold for assignats; after they had been all sold and one instalment was paid, the terms of payment were changed, and the purchasers were obliged to pay in specie or relinquish the lands. Sir, look at home and we see examples to prove the necessity of an

independent Judiciary. Have we not seen a State sell its Western lands, and afterwards declare the law under which they were sold made null and void? Their nullifying law would have been declared void, had they had an independent Judiciary.

Whenever in any country judges are dependent, property is insecure. An honorable gentleman from Kentucky says, he does not want to seek examples across the Atlantic. Sir, is this wise? Are we to shut our eyes to the light of history and turn away from the voice of experience? Sir, the untutored Indian marks on his tomahawk great events as they pass, and argues what will happen from knowing what has happened; and shall we travel on without noticing the fingerboards erected by historians for our security? The gentlemen censure our having noticed France, and read a passage from a speech of our illustrious WASHINGTON, where he called the French a great and wise people. What has been the fate of this gallant people? Where is their constitution? We have seen Lafayette in the Champ de Mars, at the head of fifty thousand warriors, who, with one hand grasping their swords and the other laid on the altar, swore, in the presence of Almighty God, they never would desert their constitution. Through all the departments of France similar pledges were given. Frenchmen received their constitution as the followers of Mahomet did their Koran, as though it came to them from Heaven. They swore on their standards and their sabres never to abandon it. But, sir, this constitution has vanished; the swords which were to have formed a rampart around it, are now worn by the Consular janissaries, and the Republican standards are among the trophies which decorate the vaulted roof of the Consul's palace.

Respecting the expediency there was for passing the law which gentlemen now seek to repeal, I shall say nothing, as my honorable friend from Delaware has entered into a most ample detail of it. Indeed, sir, he travelled through so extensive a field of inquiry respecting the unconstitutionality of the repeal, as well as of the expediency of having passed the law, that he has greatly narrowed the ground for all who follow him; his range was commensurate with the extent of his mighty mind and with the magnitude of the subject; a subject, sir, let me tell the gentlemen, that is perhaps as awful a one as any on this side the grave. This attack upon our Constitution will form a great epoch in the history of our Government. In the important changes we read of in the systems of other Governments, we find some public benefit to have been intended; something plausible at least was offered in justification. But here, "when we are in the full tide of experimental success," a revolution commences without any necessity of pretence. It is not to be presumed that the Executive has been incited to this by the paltry consideration of saving thirty thousand dollars. He has proved by his expenditures, since the fourth of March, that our nation is not in great want of money. The fact is, sir, that so good was the management by the past Administration

FEBRUARY, 1802.

Judiciary System.

H. OF R.

of our fiscal concerns that our Treasury overflows with money; to this cause may be ascribed some of the great expenditures made during the recess, and which to me appear to have been perfectly useless; but perhaps they were not so. Although the Senate, last year, appointed a Minister to France, immediately upon its rising the President appointed another honorable gentleman (who now sits near me) Envoy to carry over the treaty; although the French had called in their cruisers, and for us it was a time of profound peace, this gentleman was sent over in a man-of-war, at an enormous expense. If gentlemen will look at the printed report of the Secretary of the Navy for the last year, of money necessary to be appropriated, they will read, in page fifty-two, that the expenses of the ship Maryland are estimated, for a year, at \$37,269 77. The Maryland was seven months in carrying our Envoy, waiting his orders, and returning to America; and for seven months the expense of this ship would be twenty-three thousand four hundred and seven dollars. Perhaps all this was necessary on the part of the Executive. I barely state the fact. Another which I will notice is, that without waiting for the final ratification of the treaty, or for Congress to make appropriations for its fulfilment, the Executive had the ship *Berceau* repaired, to be delivered up to the French Government, at the enormous expense of thirty thousand dollars. Besides this, the officers were paid, when at Boston, six dollars per day. How does all this agree with assailing the most precious part of our Constitution to save a little money? But if I am under any delusion, and we are not rich; if we want to save, and must save money, let us turn to something else; let us begin with ourselves. The Speaker of this House receives twelve dollars a day, give him six; we receive six, let us be content with three: on our side we cheerfully agree to this reduction. If gentlemen will look at the catalogue of expenses, under the head of "Legislature," they will find a number of items which, if summed up, will amount to \$193,470; let us retrench, as I have proposed, and save to the nation one half of this sum; we will, in doing so, save nearly \$100,000 a year.

Sir, gentlemen may depend upon it the people of this country are too intelligent to ascribe this measure to the mere desire of saving a little money; they will view it as the vengeance of an irritated majority. I conjure gentlemen to celebrate their victory by more harmless sports. Let them triumph over us, but not by immolating the Constitution; let them beware, that in erecting a triumphal arch for the celebration of their success, they do not dig a grave, and decree funeral rites for our Constitution. I repeat again, that this is not a way to save money. If saving really be the object, let our opponents procure it by more gentle means. To attempt saving a little money by injuring the Constitution, would be like taking from the foundation to patch the roof; like digging up for use the roots of a tree, instead of lopping off the boughs. To the confidence inspired by the independence of our judges are we indebted for much of our national prosperity.

Pass this law and the tribunals in America will be like those of France, as described by the most brilliant scholar and sagacious statesman of the age. On the subject of the French judges, Mr. Burke has said: "In them it will be vain to look for any appearance of justice towards strangers; towards the obnoxious rich; towards the minority of routed parties; towards all those who in the election have supported unsuccessful candidates. The new tribunals will be governed by the spirit of faction." I feel myself much honored, Mr. Chairman, by the great attention the Committee have given to my observations. They have, I fear, exhausted all your stock of patience. I find they have exhausted all my strength; but the magnitude of the subject will, I trust, be an apology for their length. Permit me here to express my sorrow at hearing the declaration of an honorable gentleman from Pennsylvania, (Mr. GREGG,) who yesterday, after joining in the call for the question, rose, and said it was useless to continue the debate, as the minds of the majority were fully made up. It seems the gentlemen are not open to conviction, and that they have determined to violate the sanctuary. Myself and my friends will not, however, be deterred by this menace. We have always been the sincere friends of this Constitution, and we will attempt its defence as long as we have the means of making it. We will struggle to the last; if we cannot command success we will endeavor to deserve it. If the friends of the Constitution are subdued by numbers, the Ministerial phalanx, in bursting into the temple, will, I hope, find them all at their posts; they will be in the portico, the vestibule, and around the altars, grasping, grappling the Constitution of their country with holds of death, and with *nollumus mutari* on their lips.

Mr. DAWSON.—When we are told, sir, that we are about to pass a law which violates that Constitution which we have all sworn to support; when this is echoed over and over again from every quarter of this House, I can no longer, sir, indulge that disposition which I have to be silent; and I now rise to enter my protest. When we are told, sir, that we are about to adopt a measure which will endanger the peace and happiness of our country, it behooves us to summon all our wisdom, to investigate the subject with all deliberation, and to ascertain clearly those great principles which, while they guard our Constitution, secure the rights, the liberties, and property of the people. Such, sir, is the language which we have heard for the last ten days from gentlemen on the other side of the question, and such, sir, is the course which has been adopted by us. I believe, sir, that there never was any subject in any country, and at any time, more ably discussed than this has been in the other branch of the Legislature. I believe, sir, that few subjects have been more fully investigated than this has been in this House. Sir, the arguments used by an enlightened and venerable gentleman from Massachusetts, on my right; by an honorable gentleman from North Carolina, on my left, and by several of my colleagues must still be fresh in the recollection

of every gentleman of this Committee. Permit me to say, that their conclusive strength has not been impaired by anything which has fallen in reply, nor do I mean to enfeeble them by any observations of mine, either as to the expediency or constitutionality of the measure.

Sir, in a field extensive as this, it is more than probable that some gleanings do still remain; the collection of those I shall leave to other gentlemen, more ingenious and more industrious than myself, and will beg leave to reply to some of the observations of a collateral nature, which have just fallen from the gentleman from South Carolina. Think not, Mr. Chairman, that I mean to notice those which may be considered of a personal nature; the respect which I have for you, for this Committee, and for myself, all forbid it; there are others to which I will advert.

The dreadful picture which has been drawn by that gentleman of the situation of our country, should we pass this bill, will for a long time haunt the recollection of every gentleman of the Committee, and, if true, disturb the peaceful slumbers of that honorable gentleman. Whether he has drawn the picture to the life, or whether it is too highly colored, it rests with this Committee to determine. To a gentleman, sir, of his fancy, of his imagination, the task was easy, and I may add, it was a very unnecessary one. It is admitted by us, that the Constitution of our country is the ark of our covenant; the rock of our salvation, on which political storms and the rage of party may beat, and subside. This is the doctrine for which we have always contended; which we support on this day; and could the friends of this repeal be taught to doubt the constitutionality of the measure, I am bold to say, they would immediately withdraw their support. Nay, sir, for myself, I avow, that was I not persuaded that the public good and the public will do imperiously command the repeal, sympathy and a regard for the feelings of men, who have been invited into office by a public act, and sanctioned by a public appointment, would induce me to oppose this bill. But believing as I do, that the public will and the public good do command the repeal, and that the Constitution of our country does not forbid it, I shall vote in favor of the repeal, and lend to it my feeble aid.

Mr. Chairman, in the course of this debate, a new character has been introduced, and has occupied much of our attention; it was presented to us by the honorable the mover of the amendment from North Carolina; it has been invoked and pretty freely used by his neighbor, who has just sat down. It is a spirit, sir. Mr. Chairman, you will confess, that there is some difficulty in meeting an opponent of this sort, and in answering arguments drawn from this source. I believe it best done by declaration. For myself, then, I declare that spirit of which we have heard so much, that spirit of innovation which gentlemen so highly deprecate, is that spirit which I adore.

It is not, Mr. Chairman, that spirit which, fearful of itself, gave to us an Alien and Sedition law, thereby driving the invited stranger from your

shore, and rendering each neighbor suspicious of the other.

It is not that spirit, sir, which, in defiance of a positive injunction of our Constitution, placed a gag on our press, to prevent an investigation of its own proceedings. It is not that spirit, sir, which threatened a transportation of your citizens to their enemies, and the humbling of them in dust and ashes, because they dared to express their sentiments on their own concerns. In fine, sir, it is not that spirit which, by the creation of useless and expensive establishments, loaded your citizens with taxes and stained your country with insurrection. No, sir, it is the counter spirit! It is that spirit which places confidence in our fellow-citizens, and fears not the machinations of those who may visit us; which pronounces freedom to religion; freedom to the press; which restores economy in your public expenditures, thereby rendering to labor its full reward. It is that spirit, sir, which has required the repeal of the obnoxious laws I have mentioned, and of many more; and which now commands the repeal of this law; it is the voice of the people!

But, sir, gentlemen, not content with hunting down that spirit in this country, have, in the whirlwind of their fury, crossed the Atlantic and sought it in a far distant world. Sir, the time has been, nor is it far distant, when it was the rage, the fashion of the day to pour forth abuse on every act of the French Republic, from the commencement of the revolution; and, perhaps, sir, the aggressions of that nation on us might seem some justification. Often, sir, have I heard in this House woful lamentations for a murdered King, as gentlemen were pleased to call him. Often have I seen their warmest sensibility excited for the violated sanctity of the Holy Father, as they were pleased to term him. Whatever might have been the passions of gentlemen at that day, I did hope that they would have subsided at this, when we have made a peace with that Republic; and, let it here be impressed on the minds of every gentleman of this Committee, a peace on the very terms which the political friends of these gentlemen were pleased to prescribe; terms, which thus prescribed, have already brought many petitions to your table, and will, I fear, draw much money from your Treasury.

How far observations of the nature of those to which I have alluded, comport with the dignity of the National Legislature; how far they give respectability to our proceedings, or policy to our Government, I will leave to those gentlemen who use them to determine, and will notice some of the remarks which fell from the gentleman from Delaware.

Sir, that gentleman, in vindicating the Judiciary of the United States, has been pleased to whirl his censures against the Executive department; by the first, he declares, that there has not been a single act of persecution, to his knowledge, though many by the latter; that observation has been answered by one of my colleagues, and need not now be adverted to by me. I will only express, that I feel much pleasure at that gentleman's ten-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

der regard for these persecuted individuals. But the gentleman has not been content in censuring the conduct of the Executive; he has come upon this floor and cast out suspicions, at least, on the conduct of many gentlemen, who were members on a very memorable occasion. Sir, when these observations were made, I own to you, they did excite my astonishment; I did not expect them from that quarter. It is known to every gentleman of this Committee, that that gentleman represents a State, and that he always is a very efficient member on this floor. It will be remembered by many now present, that on a very memorable occasion, which, with him, I do believe the people of this country will long remember, that gentleman took a very distinguished, zealous, and persevering part. By a reference to your Journals, it will be found that it was not until the 17th day of February, when, on the 36th ballot, Thomas Jefferson was declared to be elected President of the United States; on inquiry, I find that, on the said 17th day of February, James A. Bayard was nominated Minister Plenipotentiary to the French Republic. Nay, I find more, that this nomination, although not handed to the Senate until the 17th, was dated the 13th, two days after we went into conclave; and was not confirmed until the 19th, two days after we came out. Sir, in making this statement, I mean not to impeach the motives or the conduct of the gentleman from Delaware; the high opinion which I entertain of his political morality, and the regard which I owe to truth and to candor will preclude it; neither do I mean, in making the application, to follow the example which he has set me, and to use towards him, although present, the terms which he has been pleased to use towards others, although absent; the respect which I owe to myself will forbid me to do that. I mean not to say, as he does, when speaking of our Minister at the Court of Spain, that I am yet to learn that Mr. Bayard is a man of talents, and who has rendered services; neither do I mean to consider his observations as injuring the reputation of my valued friend from New York; but I mean to say what I do believe, that, had the present President approved of that nomination made by the last, the persecuted veteran would not have received the sympathy of that gentleman, on this floor, at this day; nor should we daily have heard fulminations against the Chief Magistrate of our country, and philippics against men pre-eminent for their talents and virtues.*

Yes, sir, the gentleman has issued a dreadful fulmination, indeed; he has told us "that the day will come, he trusts in God it will come, when

our Chief Magistrate will be responsible, when he will answer for his conduct." I was somewhat at a loss, and I still am, to know what the gentleman meant by this ejaculation; did he mean it as mere declamation? This I can scarcely think. Did he mean it as a discharge of that gall which may canker near his heart? If he did, I sincerely congratulate him on his deliverance. Or did he, in a more benevolent spirit, mean to express a hope, that our Chief Magistrate will live until that day when he shall be responsible to the people in that way which the Constitution points out? If this was his meaning, I most devoutly join him in his prayer; and on that day I believe it will be found, that the giving of information to the nation on the state of the Union; that the giving of information to this House, on a subject which he has thought proper to recommend to our consideration, will not be read among his political crimes. Perhaps, though, Mr. Chairman, the honorable gentleman meant something else; perhaps, he meant to say, that the President of the United States ought to be impeached for this his conduct; if this was his meaning, that gentleman knows full well that the door is open, that the Constitution points out the mode to him, nor do I doubt his zeal to adopt; the Chief Magistrate of your country will advance to meet it; and I am bold, sir, to believe, that while he shall pursue that line of conduct which has heretofore marked his administration, it will be as difficult to establish a tribunal to rob him of the honors which his fellow-citizens have thought proper to confer on him, as it was to erect one to prevent his taking possession of them.

Sir, it is with pain I heard some observations during this discussion, to which I turn with reluctance, but which seem to demand a reply. Gentlemen, while they reprobate one spirit, seem to be possessed of another, a more evil one. We have heard of groans, sighs, and tears, over our prostrated Constitution; we have heard of disunion, civil war, and of blood. A whole host of the evils of the enemy to mankind have been conjured up to arrest the havoc of the assassin, as they are pleased to call us.

I demand to know, sir, what gentlemen mean by observations of this kind; are they addressed to our fears? I trust, sir, they know us too well to believe that an appeal of that sort can have any impression, while we are pursuing what we deem the public good. And yet, sir, I am at a loss to conjecture, for what other purpose they could be made. Whatever that purpose may be, I deem it proper for me at this time to declare, and in making this declaration I believe I shall speak the sentiments of all those with whom it is my pride to associate, that we consider the Constitution of our country as the greatest of all good, and the wilful violator of it, as the greatest of all traitors; that we mean to administer it according to its fair construction, regardless of the clamors of others; that we view a disunion of the States and civil war as the greatest of all human calamities, which are so far hidden in the veil of futurity that no eye can penetrate them, or mind think of them without horror; that we mean, sir, to guard our Con-

* Upon a subsequent day, Mr. Dawson stated, what he considered due to the gentleman from Delaware and to his own character, to declare, that he never personally knew any act of the gentleman from Delaware manifesting his willingness to continue as Minister to the French Republic under Mr. Jefferson; that whatever impressions of that kind had been made on his mind by others, were now removed by the positive assurances to the contrary, made by Mr. Bayard to him.

stitution and to cherish our Union. But, sir, should the awful day, which Heaven avert! ever arrive, when, by the folly of some and the madness of others, this fair fabric, the world's best hope, shall be endangered; when a discontented minority of this House, or a discontented member of a minority shall join the standard of the judge in opposition to the law, and thereby destroy the peace of our country; I say, sir, should that day ever arrive, I trust with confidence that the friends to the bill before you; the friends to the Constitution of their country, conscious of the integrity of their views and the soundness of their principles, will be found as ready to meet danger, and as firm in supporting what they consider the true interest of their country, as their vaunting opponents.

I solicit your pardon, sir, for these hasty and incoherent observations; they have been called forth by what fell from the gentleman from South Carolina, and by a recollection while up, of some of the many observations made by the gentleman from Delaware. I will close them, sir, in reply to the wish of the gentleman, who has just sat down, for a delay, by offering my congratulations to you, sir, and to this Committee, on the time and circumstances under which this great question must be met, and must be decided. Whatever that decision may be, I devoutly hope that it will promote the good of our common country. Whatever that decision may be, it will not be considered as the result of our fears, nor will the friends to the repeal be charged with an improper hostility to the present Administration. The days of terror and alarm are past, and I trust for ever. No longer does the sound of foreign invasion and domestic treason assail our ears, and serve as arguments for the violation of the Constitution of our country. No longer, sir, do the dangers of the commonwealth authorize infringements on that sacred instrument; peace and confidence are restored, and while the friends to the repeal rejoice at this state of things, while they mean not to violate the Constitution of our country, they mean to prevent a useless expenditure of public money, and to guard against an increase of Executive power, whether that power shall be continued in the hands of the present Chief Magistrate, or transferred to some other person.

Mr. GRISWOLD.—Mr. Chairman, I make no apology for entering upon the discussion of the subject now before the Committee, because I have considered the first section of the bill on your table, and which the motion of my honorable friend from North Carolina proposes to strike out, as implicating not only the dearest interest of the people of this country, but directly prostrating the fairest feature of the Federal Constitution. And I believe it to be the duty of every man, every friend to the Constitution, who has a right to be heard on this floor, to raise his voice against a measure so ruinous and destructive.

I do not however expect, nor am I indeed vain enough to imagine, after the extensive and critical view which has been taken of the subject, that it will be in my power to add much to what has been already urged. This consideration however presents to my mind no objection to the claims

of being heard; for although the arguments of my friends remain unanswered, yet upon an occasion so important as the present, I deem it proper that these arguments should be repeated over and over again, that no gentleman may hereafter say, when the passion of the moment has subsided, that the objections to this measure were not sufficiently urged and explained.

This subject has presented to every gentleman who has examined it, two questions for consideration: First, can the Legislature by the Constitution destroy the judges of the circuit courts by repealing the law which authorized their appointment?

Second, admitting the power to exist; is it expedient to exercise it upon this occasion? I shall not attempt to deviate from this natural arrangement, but in the beaten track of those who have gone before me pursue the same objects.

The first of these questions is by far the most important, and if decided one way, will necessarily preclude all examination into the other; for if Congress cannot, without a violation of the Constitution, destroy the judges as proposed by this bill, it is useless to inquire into the expediency of doing it, for nothing can be expedient which is repugnant to the Constitution.

But the great importance of this question, and the necessity of considering in some stage of the discussion the comparative merits of the two systems under which the courts have been organized, will be my apology for taking the same course which gentlemen have taken before me, and directing my remarks in the first place to what has been called the expediency of the measure.

The mere expediency of maintaining the system under which the courts were organized by the law of the last session, must depend on a comparative view of the provisions of that law, with the system which the present bill proposes to revive. And here I must be permitted to say, that the provisions and effects of the two systems were, a few days ago, so fully examined, and completely stated by my friend from Delaware, that it is impossible the subject should be at this time misunderstood: indeed, sir, no gentleman can misunderstand it, or resist that conclusion which has been drawn by my friend in favor of the law of the last session.

The defects of the former system under which the courts were organized had been obvious for many years, and during the whole period within which the last law was under consideration, no gentleman attempted to defend it; it was then well understood, and universally admitted, that under the old arrangement, the Judicial power could not accomplish the objects for which it was designed; and the necessity of a change had become too apparent to be denied: the only question which then divided the opinions of those who were disposed to execute with good faith the provisions of the Constitution in relation to the Judicial power, was, whether it was proper to adhere to the principle of the old system, and fill up the outline which had been drawn by adding to the judges of the Supreme Court, or, leaving those

FEBRUARY, 1802.

Judiciary System.

H. OF R.

judges to their proper jurisdiction, to organize a new circuit court with adequate powers.

The great and prominent defects of the old system, and which have been so fully pointed out upon this occasion, were not only understood but acknowledged. The absurdity of placing the same judges in the court of appeals to decide in the last resort upon judgments rendered by themselves in the courts below, was seen and felt. The effect of associating a district judge with a justice of the Supreme Court upon the circuits, could not escape the most cursory observer; and experience had confirmed the opinion, which has been long entertained, that such an association was unnatural, and whilst it destroyed the dignity of the district judge, necessarily lessened the respectability of the court itself.

The constant changes of judges from one circuit to another was also found to embarrass the business of the courts, and particularly in matters of form and practice: and the immense extent of country through which the judges were obliged to travel on the circuits; the accidents to which they were exposed, and the failure of courts, not only within the recollection of the members of the House, but proved by the laws which had been passed to revive the suits which had been discontinued from these causes, all united to satisfy gentlemen at that time that a new arrangement was indispensable. Indeed, sir, every gentleman, who has been in the least acquainted with our courts, must have seen the great delays and vexations which have arisen to suitors from the causes which have been mentioned; and that in many cases those individuals who were entitled by the Constitution to trials in the national courts, and were desirous of obtaining them, were compelled to seek for justice in the State tribunals.

There is no axiom better understood in this country than that a delay of justice is a denial of it; and whilst the old arrangements existed, although you proffered justice to your citizens and to foreigners who demanded it in your courts, yet in effect, by the embarrassments and delays to which that arrangement exposed them, justice was but a name; it was a mockery, from which they were compelled to run away with disgust.

It is true, that there was a description of persons within the United States, and perhaps within the walls of this House, who were disposed to prostrate in effect the national courts, and transfer to State judiciatures the whole Judicial power. To persons of this description it is obvious that every proposition which was calculated to improve the organization of the Federal courts, would be highly displeasing, because they knew full well that whenever the national courts should be so organized as to offer to suitors speedy and certain justice, the business of those courts would be increased, their influence and their character more highly respected. But the wishes of those gentlemen did not prevail. It was then believed, and the same opinion must always prevail with all well informed men, that a reputable and independent national Judiciary is equally necessary for the preservation of the Government, and the fair ex-

ecution of the Constitution. The absurdity of relying on State justice for the execution of our penal laws, or the laws which relate to revenue, cannot be overlooked; and in respect to private suits, it is well known that the Constitution has guarantied to citizens of a certain description, the right of trying their causes in the national courts; and you cannot, without a violation of rights, turn over these suitors to a Virginian chancellor, with his three thousand causes on the docket.

We are not yet to learn that the State courts are not the best tribunals for the trial of causes in which the nation or foreigners are concerned. The paper money systems of some States, and the breach of treaties in respect to the collection of debts in others, taught the framers of our Constitution a conclusive lesson on this subject, and they have wisely provided for the establishment of national courts, where these evils may be avoided, and made it our duty to provide for their efficient organization.

Again, it is idle to disguise the opinions which are entertained of State judiciatures by persons who have a right of trial by the Constitution in your national courts. Sir, they have no confidence in some of those judiciatures; and when they look at the delays which have always attended justice in many of them; when they see themselves liable to be thrown into a court of chancery, and compelled from the mass of business alone to wait eight or ten years for a trial, their confidence cannot be increased. To these persons, and to all those who may be charged with offences against the nation, the Constitution has secured the existence of national courts, and it is a gross evasion of the Constitution to leave the organization of these courts materially defective. It cannot, upon this occasion, become a question of any importance whether your courts are more or less expensive than State courts. The people have not left this question in our hands; they have declared by their Constitution that the courts shall exist; they have said that confidence is not, and ought not, to be reposed in State courts for the decision of national causes, or causes of a civil nature, between citizens of different States; they have left nothing upon this subject for us to do, or to decide, but what relates to the form of organizing the national tribunals.

All arguments, therefore, which are calculated to prove either the merits or defects of State judiciatures are irrelevant to the present question. The Constitution having declared that the Judicial power shall be vested in one Supreme Court and in inferior courts, and that the jurisdiction of these courts shall extend to a great variety of causes, it only remains to organize them in such a form as to render justice speedy and certain. And this the people have a right to demand at our hands. The parties in civil actions are entitled to tribunals where justice will not slumber for the want of judges to decide. The unfortunate who are accused of crimes, and the people who are interested in public prosecutions, have an equal right to require that the innocent, when accused, shall be speedily tried and acquitted, and that the

guilty shall be as speedily condemned. The arguments, then, which relate to the purity of State justice, ought to be laid entirely aside, and gentlemen on both sides of the House ought to admit that the Legislature must provide for such an organization of the courts as will secure the speedy and certain administration of justice; and the question will again return, was the organization of the circuit courts, and which is to be revived by the present bill, adequate to these objects?

After all that has been said, after the experience of ten years, I might safely appeal to gentlemen to decide whether that system was calculated to accomplish these objects? Sir, there is not a gentleman on this floor who can lay his hand on his heart and pronounce so preposterous an opinion. Indeed, some gentlemen have admitted, and particularly a gentleman from Vermont, (Mr. SMITH,) who was up yesterday, that the old system was obviously defective, and ought to be changed, but that gentleman had not the goodness to inform us what changes he would propose to remedy these obvious defects. If gentlemen are really desirous of improving the system, why do they pursue the path of destruction? They admit the defects of the old system; they must admit the advantages of the new one, and yet they hasten forward to destroy that which is good, and to revive that which is bad, without proposing a single improvement to render it tolerable. Sir, this does not look like a disposition to improve our judicial arrangements, it looks more like a determination to prostrate our national courts in the dust, and to elevate the judicatures of States on their ruins.

It has been said in the course of this discussion, that the old arrangement might be improved by adding to the judges of the Supreme Court. This proposition has been repelled whenever it has been urged. It may not, however, be improper at this time to observe, that such an arrangement would be exposed to most of the absurdities and inconveniences which attended the old arrangement itself. The unnatural association of supreme and inferior judges on the same bench would continue the same. The absurdity of a judge sitting in an inferior court and deciding causes on one day, and reversing his own judgments the day following, in a supreme court, is not removed. The shifting of judges from one circuit to another at every term, and the consequent want of identity in the circuit judges, remains as the old system has left it. The certainty of courts may be somewhat increased, but the geographical extent of the country is not diminished, nor can the circuit duty be lessened, provided you send two justices of the Supreme Court into each circuit. And, after all, what will you gain by such an organization? As to economy, which is so much the order of the day at this time, you will not promote it in any essential point; the salaries of your new judges will amount nearly to as much money as the salaries of your present circuit judges, and the expense of holding courts will be precisely the same. That uniformity of decision, which is so necessary throughout

the United States, will not be materially promoted by this arrangement; because the provision already made for that object, by writs of error and appeals to the Supreme Court, will preserve that uniformity in every point, which is not a mere matter of form; and, in respect to the forms of business, it is of little importance whether the forms of one or the other part of the country are preserved, provided the principles of decision are the same. There is, however, one object which will be gained by the proposed arrangement. You will gain a great accession of numbers to the Supreme Court, and you will make that tribunal in which the justice of the country is to reside, to resemble a popular assembly, and liable to those party agitations which are so uniformly found in every large assemblage of men.

Some gentlemen, however, have said, that without increasing the number of judges in the Supreme Court you may render the sessions of the circuit court more certain, and identify the judge upon each circuit, by dividing the United States into as many circuits as you have judges of the Supreme Court, and attaching one of the judges of the Supreme Court permanently to each circuit. Sir, of all possible expedients, this, in my opinion, is the worst, for, without removing the most formidable objections to the old system, it absolutely renders the decision of causes impracticable. If the judge of the Supreme Court, and his associate, the district judge, shall differ in opinion upon any cause which comes before them, there can be no decision; and justice becomes more uncertain (if possible) than in the court of a Virginia chancellor.

On the whole, said Mr. G., the gentlemen who advocate the present bill have proposed no substitute for the system which it is calculated to abolish, and whilst they admit the necessity of courts, and the defects of the old system, they cannot in this hasty manner prostrate an useful institution, erected in obedience to the Constitution, on any principle of decency or patriotism. It is certainly true that no exertions have been spared by the Executive power to prove the inutility of the present circuit courts, and the novel expedient has been gone into of sending into the Judicial department for a report of all the causes which have been returned to the national courts, and from these reports, the President has sent to this House the document number eight. Sir, many of the errors which that document contains have been already exposed, and I have not troubled myself to investigate them further, because I have considered the document itself of no importance. I will however observe, that if my information is correct, in relation to returns from the circuit court of Connecticut, and I presume it must be, because it is derived from the clerk of that court, the return on your table is not the return which was sent to the Executive from that circuit. That return included the names of the parties in each action now depending, and if it had been sent to us un mutilated, it would have appeared whether the aggregate of causes had been truly extracted, and it would likewise have appeared who were

FEBRUARY, 1802.

Judiciary System.

H. OF R.

the defendants in that court, from what class of citizens the President had made the late Executive appointments in that State, and who the persons were, who are now probably afraid of federal justice. But, sir, this document, imperfect and erroneous as it is, still proves (if, indeed, it proves any thing) the necessity of these courts; it proves that much business has been transacted in the national courts, and that much remains to be done. But if the business was much less than it really is, could that consideration afford any conclusive argument against the existence of the courts? This, I believe, is the first time that the utility of courts has been tested by the number of causes depending in them. In a country so commercial as this is, and embarked in so many enterprising pursuits, in which foreigners are concerned as well as our own citizens, it is impossible to prevent the existence of disputes; and if a small number of suits only have been carried into the courts for decision, it proves either that the courts were so badly organized that justice could not be obtained in them, or that justice has been so well administered, that men have been induced to do justice to each other without any appeal to the courts.

But this inquiring into the number of causes depending or tried in the courts, tends more to embarrass the question than to guide the judgment in its decision. It is not important to be informed how much business has been or may be done in the courts; it is sufficient to know that the existence of national courts is not only necessary, but expressly required by the Constitution, and that they must be so organized as to render justice speedy and certain to every man who has the right to apply for it; and whilst it is both provided and admitted that the old arrangement could not secure this object, and that the new one has greatly promoted it, it must necessarily result that a determination to destroy the one and restore the other, can only arise from a spirit hostile to the judicial power of the Union.

I will, however, detain the Committee no longer upon this part of the subject, but call their attention to the great question which has grown out of the present question; I mean the Constitutional right of the Legislature to destroy the judges by repealing the law which regulated the mode of their appointment. And here I ask the liberty of observing, that I feel no terror in approaching this interesting question. Its importance can only animate us in the inquiry, and stimulate our exertions in the defence of truth and the Constitution. Nor am I intimidated by any arguments which have been urged in support of this novel claim of the Legislature, because those arguments, in my judgment, have been as often refuted as they have been urged.

With the gentleman from Virginia (Mr. GILES,) I believe that the power of the Legislature must be ascertained by the words of the Constitution itself. With that gentleman, I think that this instrument is expressed in clear and unequivocal language. And he cannot admire with more ardor than I do the wisdom of the sages who formed it, or the provisions which it contains. Indeed,

sir, I admire not only the provisions of the instrument, but the order and arrangement in which it is expressed. And I fully believe, if gentlemen will attend to the order as well as the provisions of it, they will find themselves less embarrassed in the expositions which they must pronounce.

Sir, the framers of the Constitution have kept every object which it contemplates perfectly distinct; they have blended no two subjects together; each point is settled by itself, and never embarrassed by involving the definition of other points or other powers under the same head. This order and symmetry will be apparent, when gentlemen turn to the Constitution. It will be there found that the first article relates exclusively to the Legislative department. The mode of election, the term of service, and the power of the Legislature, are there fully and clearly defined; and it will be found that there is not a section in the article, nor a sentence, which delegates power to any other department, nor can there be found in any other article an expression which conveys an atom of power to the Legislature. The second article, pursuing the same order, treats exclusively of the second department, and does not include a word which does not relate to the Executive power. The third article, with the same precision, is confined to the Judiciary department. The fourth relates to the authority of the States, and the duty and power of the National Government, both as it regards States and public property. The fifth article provides for amending the Constitution. The sixth defines the duty of Government in relation to debts, and the effect of the Constitution and laws made under its authority; and the seventh prescribes the mode of ratification.

To investigate, then, the powers of the Legislature in relation to the Judicial power, I must beg the attention of the Committee in the first place to that part of the first article which relates to this subject. And here it will be found that there is not an expression in this article, or in any part of the Constitution, which delegates to Congress any power on this subject but what is contained in two sentences in the eighth section of this article: The first declares that "Congress shall have power to constitute tribunals inferior to the Supreme Court;" the second, "to make all laws which shall be necessary for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof." By the first of these provisions Congress are clothed with unlimited power in the erection of inferior courts, both in respect to the number and their jurisdiction; and if this power had not been limited in other parts of the Constitution, it is certain that the jurisdiction of those courts, both in criminal and civil causes, might have been extended to every case which could possibly arise in any State or within the United States. And, if gentlemen please, under this general and unlimited delegation of power to erect courts, Congress might not only create and abolish courts and judges at will, but might limit

H. OF R.

Judiciary System.

FEBRUARY, 1802.

the tenure of office to a term of years, to be held at the pleasure of the President or any Executive officer of the Government. It is under the authority of this part of the Constitution that the inferior courts have been established, and it is apparent that the power given to the Legislature by these general words is not only broad enough to cover all the ground demanded, but much more; and for myself I shall readily admit that, unless this power has been limited by the subsequent parts of the Constitution, Congress may at this time do what they please with courts and judges. Under the second provision which I have cited, Congress were authorized to pass the law organizing the Supreme Court and establishing the salaries of the judges of all the courts, and to pass all laws which were necessary to give complete efficacy to the Judicial power.

I will not detain the Committee by examining the particular provisions of the second article, because that relates exclusively to the Executive power, and is not materially connected with this subject, but will pass to the consideration of the third article, and to which I now beg the particular attention of the Committee.

The third article of the Constitution does not delegate any power to the Legislature; its object is to make a disposition of the Judicial power, to limit and to define it; these are the great objects, and the article has provided for them in the following manner: By designating the courts in which the Judicial power shall vest; by securing to the judges a tenure of office commensurate with good behaviour, and a compensation for services which cannot be diminished; by defining the jurisdiction which the courts shall exercise; the mode in which trials shall proceed, and the facts which shall constitute certain crimes.

The courts in which the Judicial power shall vest are designated by the following words: "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It is evident, both from the subject-matter of this article and the expression which I have repeated, that the framers of the Constitution only intended in this place to dispose of the Judicial power; and to authorize the erection of courts by Congress. The words "in such inferior courts as the Congress may from time to time ordain and establish," were never intended to convey a power to Congress to establish such courts, because that power had already been given in the first article of the Constitution, to which I have before directed the attention of the Committee, and no surplusage can be found in the instrument, and because the object of the expression being to vest the Judicial power in certain courts, the subject-matter does not admit of any such construction. The expression then plainly intends nothing more nor less than this: the Judicial power shall vest in one Supreme Court, and in such inferior courts as Congress under authority of the first article of the Constitution shall establish. It is further to be remarked, that the expression presupposes the

existence of a Supreme, and of inferior courts, and the article contains no imperative language commanding the organization either of the one or the other. The provisions of the article likewise require as much the existence of inferior as a Supreme Court, because the words which define the jurisdiction of the Supreme Court, giving that court an appellate jurisdiction in certain cases, cannot be satisfied without the existence of inferior courts, from whose decisions the appeals may be taken; and the expression itself, declaring that the Judicial power shall vest in a Supreme and inferior courts, necessarily divides to the inferior courts a portion of that power, and renders the existence of such courts necessary for the reception of the power thus delegated.

The inference which I draw from these considerations is, that the Supreme and inferior courts are creatures of the Constitution, and not of the law; their existence having been rendered necessary for the reception of the Judicial power, by clear and unequivocal language; that the judges when appointed, are of course equally creatures of the Constitution, and hold their offices under that instrument in as full a manner as the President himself.

It is true that neither the inferior or the Supreme Court could have been organized, and the judges appointed, without a previous law regulating the mode of performing the operation; and it is equally true, that neither the Representatives on this floor nor the President himself, can at this time be appointed without the aid of a law apportioning the representation in one case, and directing the meeting of Electors in the other. Indeed, sir, at the commencement of the Government it was impossible, and still remains so, to obtain the appointment either of President, Senators, or Representatives, without the aid of State laws; but the man must be wild indeed, who imagines that these officers are not the creatures of the Constitution because their mode of appointment has been regulated by law, and in my judgment the man must be equally deranged who imagines that the courts and the judges are not the creatures of the Constitution because the mode of their organization and appointment has been regulated in the same manner. The truth is, that the Constitution has required with great precision the existence of a President, of Senators, of Representatives, and of judges, and in every case left the mode, and in the cases of Representatives and of judges, the number to be regulated by law. And after your law has passed and the appointments have been made, all these officers hold their offices under the Constitution, and you may as well remove the President, the Senators, or the Representatives, by repealing the law which directed the mode of their elections, as to destroy the judges by repealing the law which regulated their number, the mode of their appointment, or their jurisdiction. Sir, the principle can never be admitted; but the reverse is true, that all these officers, having been once appointed, must remain in office during the term, and under the conditions which the Constitution has pre-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

scribed. This then brings me to the second object of the third article, and to inquire by what tenure the judges are to hold their offices, or, in other words, how long is the judge to remain in office, having been once in under the Constitution?

The words of the Constitution are, the "judges both of the Supreme and the inferior courts shall hold their offices during good behaviour." To my mind no language can be more clear and explicit than this is. "The judges shall hold their offices during good behaviour;" indeed it is difficult to explain the expression in terms more certain or explicit than these are. Ask the merest school-boy who runs through your streets, how long is a judge to hold his office, who is to hold it during good behaviour? And he will reply, without hesitation, that he must hold it as long as he behaves well; he must hold it for life, if he does not misbehave during that term.

It is, however, our misfortune, in this rage for innovation, to find that language and those terms which but a few years ago were not only clear and explicit, but well understood, tortured from their obvious meaning; and we are compelled to follow gentlemen through their novel expositions, and endeavor to restore the terms and expressions of our language to their former import.

Gentlemen appear, however, to be aware, that it would at this time be rather too bold to deny the ordinary effect of the "good behaviour," but they contend that there is a latent meaning in those words when applied to the Constitution, which has lately been discovered, and which, as I suppose, cannot be easily discerned by those whose minds have not been illuminated by the new philosophy. And if I understand the purport of this discovery, as explained to us, it is, that although the Constitution absolutely requires "that the judges shall hold their offices during good behaviour," yet that nothing is intended by this, but that the judges shall hold their offices against the power of removal in the President; and one gentleman from Virginia (Mr. GILES) has gravely attempted to support this strange exposition, by saying that the term "hold," used in this part of the Constitution, warrants the construction that the term "hold" implies tenure, and tenure implies not only a person holding, but a person or body under whom held; that the expression the judges "shall hold their offices during good behaviour," necessarily and only implies, that they shall hold against the person or authority appointing, so long as they behave well; and as the second article of the Constitution has designated the President to appoint judges, with the advice of the Senate, and to commission them, it follows that the judges do hold their offices under the President, and are only secured by the Constitution against his power of removal so long as they behave well, being still liable to be destroyed by the Legislature in the manner now proposed.

Much credit is undoubtedly due to the gentleman from Virginia for the novelty of his exposition, but I must be permitted to say that the gentleman has fallen into an error in two essential

points—he has, in the first place, entirely mistaken the import of the word *hold*; and, secondly, his construction, if the same had been correct, could not apply to the present question. Sir, the term *hold* does not imply, in a legal, political, or ordinary sense, a person holding and a person or body under whom held; it implies nothing more nor less than absolute possession; and to hold is to possess, to occupy, to enjoy; and the tenure by which a thing is held, or the condition annexed to it, must be defined by other words. Whatever I hold I possess, and whether it is the gift of a friend, the fruit of my personal exertions, or a loan for a term of years, it is nevertheless absolutely held, possessed, and enjoyed. So in the present case, the judges are to hold their offices during good behaviour, that is to say, they shall absolutely possess, occupy, and enjoy their offices so long as they behave well, against every power of removal. The gentleman's exposition then, having been founded upon the misconstruction of a single term in the Constitution, has altogether failed at the threshold, notwithstanding the promise of that gentleman to illumine our minds by the clearness of his logic.

But if the definitions of the gentleman had been correct, they could not have been applied to the present question. Admit, for the sake of the argument, that the term *hold* implies all that the gentleman contends for, it does not follow that the President is the person under whom the office is held; on the contrary, it is impossible for the gentleman to establish his assertion, without investing the President of the United States with all the prerogatives of the British monarch. Sir, it is true, that the King of England is the fountain from whence all the honors of that government flow, and of whom all offices are supposed to be held; but I thank God, notwithstanding the opinion of the gentleman from Virginia, that is not the case in this country; the President is not the fountain of honors with us; the offices of government are not held under the President, but of the people, and the President himself is as much the agent of the people as any subordinate agent in the nation, and his acts, when performed within the pale of the Constitution, are the acts of the people, executed by their agent. Admitting, then, that the judges hold their offices under a superior power, and it is certainly true that they do hold under the Constitution, and of the people, although the term *hold* does not imply it, yet a consequence directly the reverse of that contended for by the gentleman from Virginia, will follow; for, according to that gentleman, the expression, that the judges shall hold their offices during good behaviour, being a limitation of the power of removal, in a body under whom the office is held, and these offices being held under the Constitution and of the people, it necessarily results, that the people themselves cannot, either in person or by their agents, remove the judges, so long as they behave well, without a change of the Constitution.

Again, the gentleman from Virginia might as well contend that the judges hold their offices under the Senate or the Legislature itself, as under

the President. The Legislature pass the law which regulates the mode of appointment; the Senate concur in the nominations of the President, and in this form all have an agency in the appointment of judges, and the judges hold their offices under the Legislature, the President and the Senate, and, consequently, the restriction upon the power of removal applies as well to the Legislature as to the President.

There is another strange position which has been advocated upon this occasion, and which deserves some attention, because it has been often repeated. It is that, although you cannot remove the judge from the office, you may remove the office from the judge. To this extraordinary assertion I answer, that the words of the Constitution admit of no such construction. The expression being, that the judge shall hold his office during good behaviour, necessarily implies and secures a union of the office and the officer, so long as the officer shall behave well, and a removal of the office from the judge destroys as effectually this union as the removal of the judge from the office could do. Gentlemen admit that the judge cannot be removed from his office, because the Constitution has united the officer and the office together, and declares that the union shall remain inviolate so long as the judge behaves well; and yet, strange to tell, you may destroy this union at a stroke, by destroying the office itself! I request gentlemen to review this assertion, and to inform the Committee what possible difference there can be, in effect, between removing the man from the office and the office from the man. If constructions of this kind can be admitted, there is not a crime which was ever perpetrated by man, which cannot be justified. Sir, upon this principle, although you may not kill, by thrusting a dagger into the breast of your neighbor, yet you may compel your neighbor to kill himself by forcing him upon the dagger; you shall not murder, by destroying the life of a man, but you may confine your enemy in prison, and leave him without food, to starve and to die. These may be good distinctions in the new system of philosophy, but they can never be admitted in the old school. I will not, however, consume the time of the Committee by any further remarks on the extraordinary distinction which has been taken between the power of removing a judge and that of removing an office. If such distinctions can gain credit in this Committee, it is idle to attempt to repel them.

Although it is in my power to discern any difficulty which can arise in the construction of the Constitution upon this subject, yet, as I am bound to imagine that some doubt does exist, because gentlemen declare so, I will now take the liberty of referring gentlemen to a source of information, from whence they may ascertain the precise effect of those words in the Constitution which relate to the tenure of the office of the judge. I mean the construction which was put upon the Constitution by those who framed it, and by the contemporary writers of the day, who treated of this subject whilst the Constitution remained be-

fore the State conventions for their adoption. The meaning of the words must, in the nature of things, be at first arbitrary, but it would be madness to admit that the power of changing their meaning remains equally so, after they have been introduced, with a precise meaning, into a written instrument.

Fortunately, for our present purpose, the tenure by which the judges of our national courts were to hold their offices, was an object of too much importance to escape the critical examination of the friends and enemies of the Constitution, and it is a fact no less important than true, that the construction which we contend for, was at that time given by the writers of all parties and of all descriptions, without an exception to the contrary. Sir, the people of this country have been long attached to an independent Judiciary; they draw their attachment not only from the thing itself, but from the principle of the British Government, from whence we have drawn so many of our political opinions, and from the evils actually experienced by many States under their colonial governments for the want of an independent Judiciary. These circumstances will account for the critical attention which was paid to this part of the Constitution in its formation and adoption.

The extent and meaning of the terms *during good behaviour*, have not only been ascertained by contemporary writers, but antecedent to our Constitution. The statute of England, which has been already alluded to, is one of these authorities, and proves directly the converse of that which has been supposed. That statute declares that the judges of England shall hold their offices during good behaviour, providing, however, that they may be removed by the King upon the joint application of the two Houses of Parliament. Now, sir, no gentleman can be so ignorant as not to know, that the exception of this proviso in this statute proves the rule; it proves that the authority given to judges to hold their offices during good behaviour would have completely placed them beyond the reach of King, Lords, and Commons, so long as they behaved well, and so long as the statute continued, if the proviso had not limited the effect of the general words.

In respect to the contemporary writers, I will first mention the author of the Notes on Virginia, an authority which I presume gentlemen on the other side of the House will respect. The writer of those Notes has published a constitution drawn up by himself for the State of Virginia. This form of a constitution, although never adopted by that State, yet serves to prove what was, in the opinion of Mr. Jefferson, the extent and meaning of the words, "during good behaviour." In that constitution, Mr. Jefferson provides that the judges of the higher grades of courts shall hold their offices during good behaviour, but in the inferior courts they shall hold their offices during good behaviour and the existence of the courts. I ask gentlemen why this mode of expression was introduced in relation to the inferior courts? Why, sir, but for the reason which gentlemen must

be blind if they do not see; because the tenure of office during good behaviour was so broad and extensive, that the judges once in under that tenure would hold their offices for life if they behaved well, beyond the power of the Executive or Legislature to remove or destroy them; and in order to enable the Legislature to remove the judge, or, if gentlemen please, to remove the office, and limit the general words, it became necessary to provide that the existence of the judge should only be commensurate with the court, thereby giving in effect a power to the Legislature to destroy the judge by abolishing the court in which he was to act.

The periodical papers of the day under the signature of *Publius*, which it is now well known were written by some of the ablest men of this or any other country, and by those who were members of the General Convention, and were published for the purpose of explaining and recommending the Constitution to the people of the United States before its adoption, contain the same exposition of the tenure of the office of judge, and place the judge equally beyond the power of the Executive and the Legislature.

The decisions and legal opinions of the State judges of Virginia, upon those parts of their constitution which relate to this subject, go to the same point. The same expressions in the State constitutions themselves, and the application of that language to the question, in those States where the Legislature appoint the judges, prove that the limitation of the power of removal applies as well to the Legislature as to any other department.

The debates in all the State Conventions for adopting the Constitution, and particularly in the Convention of Virginia, in which this subject was fully explained, both by the friends and the enemies of the Constitution, can leave no doubt in regard to the construction at that time given to the words which define the tenure of the office of judge.

Indeed, sir, I challenge the gentlemen who are opposed to the construction now contended for, to produce a sentence from any contemporary writer of reputation, which is opposed to the correctness of our construction. Nay, sir, I go further, I challenge the gentlemen to produce a paragraph from a newspaper of that day, which impugns the exposition now supported. And permit me to observe this subject was as interesting at that time as it is now, and was as well understood.

There is moreover a further authority to this point, which ought to be considered as conclusive; it is the authority of the Convention itself. Upon this great question of rendering the judges independent of the other departments, it was thought by some, that they ought not to be made completely so, and a proposition was brought forward in the Convention to authorize the removal of the judges by the President, upon the joint application of the two Houses of Congress, and this proposition was deliberately rejected. Sir, it is impossible a proceeding should more clearly expound the intention of the Convention, than this has done; an intention which cannot be mistaken, of placing

the judges beyond the direct or indirect power of the Legislature.

Sir, it is perfectly apparent that the meaning of the expressions of the Constitution which relate to the subject, were fixed and well understood, both by the Convention and those who adopted the Constitution; and I ask gentlemen before they press forward to a decision, to examine whether it is proper? Whether it is competent for us at this time to set at naught the constructions which were then given? Sir, where are we to stop? What security have we, that every feature of the Constitution will not be defaced by some new definition of words and expressions? Our fathers and our brothers who formed and who adopted this Constitution, thought they understood its provisions and its effect; but alas! they were ignorant and blind, and knew not the import of the instrument which they subscribed.

Sir, if Congress can set aside these solemn and settled constructions, there is not a provision in the Constitution too sacred to escape the rapacious hand of the Legislature. A majority may hereafter say, that two really means ten, and the members of this House shall hold their seats for ten instead of two years; or that four means twenty, and that the President shall continue in office for that period of time.

An independent Judiciary is the greatest object which can be obtained by any Government; on this depends the property, the lives, and the liberties of the people. It was the fairest feature which the Constitution presented for our acceptance; strip it of this; let it be the settled construction of the Constitution, by a final decision of these courts who must pronounce on your law, and I will unite with my friend from North Carolina in declaring, that I will not heave a sigh, or drop a tear for its loss forever.

Sir, if your Constitution is to be blown about by every wind; if it is to be curtailed or enlarged, as the caprice or the ambition of every new man shall desire, there is no security to be derived from it. Your experience will only confirm what many sagacious men have predicted, and all wise men have feared, that a Constitution upon paper can never endure; that the ingenuity of man will be continually exerted to pervert its meaning; to make it a nose of wax, to turn it in every direction, as the convenience of the moment or the projects of a faction shall require. Sir, let us not by our conduct verify these predictions; let us not leave behind this melancholy lesson to the world; if we love the Constitution, if we honestly wish to preserve it, we must admit of no new sophisticated expositions; we must not only support it, but we must support it in the constructions given to it at its adoption. Sir, if you transgress these bounds, you are afloat upon an ocean which has no limits; innovate but in one essential point, the constructions then given, and a few short years will prove that the rapacious hand of power will not leave a vestige of the mighty fabric.

The strong inducements which presented themselves to the Convention to render the Judicial power independent of the Legislature, furnish a

further argument in favor of our construction; for although I admit that this argument cannot be conclusive, because it is not so much the inquiry what the Constitution ought to be, as what it really is, yet if any doubt in fact hangs over the language, it is fair to ascertain the meaning by recurring to what must have been the wish and intention of those who formed the instrument.

The power given to the courts to pronounce on the constitutionality of laws would be entirely defeated, in those times when the exercise of that power becomes most necessary, if the judges are not placed beyond the power of the Legislature. The idea of giving this power to the courts, and at the same time of leaving the courts at the mercy of that department over which the power is to be exercised, is rather too absurd for gentlemen, even in these days of extravagance; and gentlemen, aware of this, have had the confidence to deny that this power resides in the courts. Sir, upon this point, it is not necessary to say, that these declarations are opposed to all former opinions and decisions. It is well known to every member of this Committee, that the right of the courts to decide on the constitutionality of your laws, has been recognised in your laws themselves; has been exercised by the courts; your laws have been pronounced unconstitutional and void, and that decision has not only been acquiesced in by the Legislature, but the act itself has been removed from your code of statutes. Nor is this principle peculiar to your national Government; it exists, and is exercised under every State Government, where the powers of the Legislature have been limited by a written Constitution. The principle not only exists, and results from the nature of this Government, but is provided for by the terms of the Constitution itself. The words declare that the Constitution shall be the supreme law, and the judges are not only bound to respect it as such, but have sworn to support it, and they would be guilty of perjury if they should knowingly decide for the execution of an act which the Constitution did not warrant. Nor can any embarrassment result from the execution of this principle; the judges must pronounce upon your laws generally; they find two statutes in your law book which are repugnant to each other; they must decide which of the statutes shall bind: they find the law of the Constitution and the law of the Legislature clashing with each other; they know the first is paramount, and limits as well the power of the Legislature as the power of the court, and they must decide either that the law of the Constitution or the law of the Legislature is void. In such a case there is nothing left to discretion, the Constitution is peremptory and commands the obedience of every department.

If this power of checking the unconstitutional acts of the Legislature is necessary, where can it reside with so much propriety as in your courts? This department, from its nature, must be filled with men of learning, wisdom, and moderation. It possesses none of the prerogatives which can be dangerous to public liberty. It commands neither the wealth nor the force of the nation; its province

is to pronounce upon the law; to declare what is right and what is wrong. And that this power ought to reside somewhere, cannot be doubted by any man who sincerely wishes to perpetuate our form of Government.

Sir, if there is no power to check the usurpations of the Legislature, the inevitable consequence must be that the Congress of the United States becomes truly omnipotent. All power must be concentrated here, before which every department and all State authorities must fall prostrate. Admit this principle, and nothing can resist the attacks of your national laws upon our State sovereignties. Here is an end of your Federal Government. A consolidation of the States is the immediate effect, and in a few short years these sovereignties will not even obtain the name.

But a further effect will result from this principle, which, in my opinion, is still worse than that which I have described. All the authority which unlimited power can exercise, must not only be concentrated in the Legislature, but must ultimately fall into this House, where numbers and predominating influence must swallow up the other departments, and in this mode there must be erected a despotism as terrible as it is powerful. It is the despotism of one hundred and six men, clothed with unlimited power, and liable, from its organization, to all the passions and all that fluctuation which can ever agitate a popular assembly. From such a despotism I pray God to deliver this country, and entreat gentlemen to stop in that mad career which leads inevitably to this result.

I have now gone through with the general remarks which I deemed proper to submit to the Committee upon this subject, and might perhaps with propriety dispense with all further observations; but some of the arguments which have been urged in support of this measure, have not been particularly noticed; and, upon an occasion so interesting as this, I shall be excused for calling the attention of the Committee to those which now occur to my recollection.

Before I enter however into a particular consideration of the arguments of gentlemen, I take the liberty of saying that gentlemen in this House, whatever may have been done in another place, have placed this question in one respect upon its true ground; they have made no distinction between the authority of the Legislature over the judges of the supreme and the inferior courts. All their arguments have gone to prove that no such distinction can exist. Indeed, sir, it is impossible to perceive the shadow of a difference. The judges both of the supreme and the inferior courts are equally creatures of the Constitution, and the mode of appointment in both cases has been regulated by law, and if you can destroy the judges of the inferior courts by repealing the law which limited their number, and directed the mode of appointment, you may destroy the judges of the Supreme Court by repealing the law which limited the number and organized that court. I wish it then to be as perfectly understood in every part of this country, as it is in this House, that the principle

FEBRUARY, 1802.

Judiciary System.

H. OF R.

contended for by the supporters of the bill goes equally to the destruction of the judges of the supreme as of the inferior courts.

One argument, which has been urged in support of this bill, has been that the law of the last session, which it contemplates to repeal, was in itself unconstitutional, and for that reason ought to be repealed and removed out of the way; and a gentleman from Kentucky (Mr. DAVIS) has referred us to the second section of that act, as proof of this assertion, and appears to imagine that the authority given to the Supreme Court to issue certain writs cannot be warranted by the Constitution. Sir, without entering into an examination of the Constitutional authority of the Supreme Courts, to issue the writs which have been enumerated, I take the liberty of referring the gentleman from Kentucky, to the last part of the section of which he complains; he will there find that the power of the courts to issue the writs is confined to cases where it becomes necessary to issue them for the exercise of its jurisdiction, and that they shall be only issued agreeably to the principles and usages of law; and I believe that the gentleman from Kentucky himself will scarcely assert that an authority to issue writs under such limitations, is not warranted by the Constitution.

Gentlemen have also referred us to those parts of the law of last session which abolish the old circuit courts, and the district courts of Kentucky and Tennessee, and appear to imagine that, by abolishing these courts, the judges who were authorized to hold them were destroyed. Sir, those gentlemen who have called our attention to this point, appear to have fallen into a mistake, which has been very common with gentlemen of a certain description; they have pursued a theory and overlooked the fact. What judges were destroyed by abolishing the old circuit courts, and the district courts of Kentucky and Tennessee? I inquire for the fact. Sir, gentlemen will find that no judge was destroyed by the putting down of these courts. By whom were the old circuits held? If gentlemen do not know, I will inform them, that those courts were held by a judge of the Supreme Court, and by a district judge, and gentlemen cannot be so ignorant as not to know that the judges of the Supreme Court and the district judge remain in office, notwithstanding their services in the circuit court have been dispensed with. Besides, those judges were never appointed or commissioned to be judges of a circuit court; they hold but one commission, and that commission in the first case, is as judge of the Supreme Court, and in the second, as district judges; and the old law, in assigning to these judges their duties, required that they should at stated times associate together, and hold a court, which was denominated a circuit court, and no man ever doubted the power of the Legislature to enlarge or diminish the jurisdiction of a judge, so far as it could be done without invading his independence. The fact, then, in respect to the old circuit courts, is opposed to the theory. No judge has been destroyed by the act of the last session,

and in respect to the district judges of Kentucky and Tennessee, the fact is precisely the same, for although the courts which these judges were authorized to hold under the old law, were dispensed with by the new law, yet the judges remain as they always were, judges of the United States, under the name of district judges, and the jurisdiction which they formerly exercised in most respects is to be performed by associating with the circuit judge of the sixth circuit, and holding courts to be denominated circuit courts for that purpose.

The difficulty into which gentlemen have fallen, appears to arise from confounding the terms court and judge together; they appear to suppose that these terms are synonymous, whereas no two terms can be more distinct in their significations. A court is not a judge, nor is a judge a court. A judge is a public officer clothed with judicial powers. A court is a place where justice is administered, or an assemblage of judicial officers, organized for the exercise of judicial powers. The term court has a variety of significations, but never can be construed to mean a judge; a judge may be authorized to hold a particular court, but it would be absurd to say, that because his authority to hold that court was taken away, that the judge himself no longer existed. Sir, if gentlemen did not perplex themselves with unfounded theories, there would be no difficulty in this part of the subject. It is admitted by all parties that the jurisdiction of judges may be varied as often and to any extent which the Legislatures deem expedient, provided, in doing this, you preserve inviolable the independence of the judge. The Legislatures may dispense with the attendance of judges in old courts, and require their attendance in new courts, at will. This, and this alone, has been done in the case under consideration, and the existence of no judge has been affected. It may be further remarked, that our judges are in a strict sense judges of the United States, and the names which may be given to them, whether taken from the courts in which they are to act, or the country in which they reside, has no connexion with their judicial powers; and being judges, by whatever name they are called, their jurisdiction may be varied; the places for holding the courts may be changed and their associates varied, as the necessities of the country shall, in the opinion of the Legislature, require; keeping, however, always in view the substantial independence of the judge. It was on these principles that the authorities of the district judges of Kentucky and Tennessee were extended. Those judges were originally confined to their respective districts, but the law of the last session required their attendance in the adjoining districts, where they were to associate with the circuit judge, and exercise the jurisdiction which had been given by law; and to compensate them for those additional services, the same law provided an increase of salary.

A further argument has been urged in favor of this claim to destroy our judges, which is founded on the following general assertion, that the power to create necessarily includes a right to destroy.

In answer to this assertion, I take the liberty of saying, that it is neither true in fact, nor can it be applicable, if true, to the present question. A power to create does not include a right to destroy. This may be proved by stating a great variety of cases, but I will confine myself to the Constitution, and select one or two provisions, about which there can be no dispute. The Legislature have power to fix the compensation of the President, but they cannot vary it during the term of the incumbent. The Legislature have power to fix the salaries of the judges, but they cannot diminish those salaries whilst the judges remain in office. The truth, then, is, that the right to destroy does not depend on the power of creating. In many cases the right to destroy must depend on the immutable principles of morality. In civil transactions it will often depend upon the stipulations of a contract, and in the business of legislation it will depend entirely on the nature and limitations of your Government. So that the inquiry will still return, does the nature and limitation of our Government give to the Legislature a right to destroy the judges?

Nor could the assertion apply to the present question, if it had been true, because the judges were not created by the Legislature, but by the Constitution—the mode of appointments, &c., having been only left to the Legislative department.

One further general assertion has been made, from whence gentlemen have thought proper to derive arguments in support of their claims. It is, “that ours is a Government of responsibility, and that the departments are responsible to each other.” This assertion is undoubtedly true, but the logic must be novel indeed, which can force this principle to bend to the purposes designed. The theory of our Government certainly embraces the principle of responsibility, but it is precisely that responsibility which is delineated in the Constitution. The members of each House of Congress are responsible to their respective bodies, and may be expelled whenever two-thirds of the members of that House to which the individual belongs shall think proper to exercise the power of expulsion. The Legislature itself is responsible to the Judiciary department for the constitutionality of its acts, and those acts, as has been already shown, may be declared void, if they are not warranted by the Constitution, and the members of the Legislature are responsible to the people upon the returns of every new election. The President himself is responsible upon an impeachment before the Senate, and upon a conviction by the sentence of two-thirds of that body, he may be removed from office, and he is again responsible to the electors at the end of four years. The judges also are responsible upon impeachment, and may in the same manner be removed from office, whenever they shall be found guilty of misdemeanors, by two-thirds of the Senate. When we speak, then, of the independence of our judges, we intend only that Constitutional independence which places them above the power of any department to remove them, except upon impeachment.

Under this general scheme of responsibility, one gentleman has gone so far as to say, that the judges are responsible to the Legislature under the power given to appropriate money for the payment of their salaries, and if we do not like the judges or think the salaries too high, we may refuse the necessary appropriations. Sir, I will not insult the understandings of the Committee by answering this argument; and I only mention it at this time to express my astonishment, that a principle only calculated to “stop the wheels of Government,” should at this time be renewed on the floor. If gentlemen are really determined in this form to arrogate all power to this House, it will be more manly to assume it openly and without disguise. Still, however, pursuing this plan of responsibility, a gentleman from Kentucky has told us that the judges are responsible to the people upon every new election, and whenever it shall appear by the result of the elections, that the people are opposed to the political opinions of the judges, they are, as I suppose, to be tumbled from their places, and the seats of justice are to be filled with men whose minds will bend more easily to the will of the prevailing faction. On what page of the Constitution the gentleman from Kentucky has found this alarming principle, it is impossible for me to say. I can, therefore, only declare that, in my judgment, it is subversive of every provision in that instrument, and must convert the courts into revolutionary tribunals, and render them the mere agents of a prevailing faction to execute vengeance on their political opponents.

A further argument has been urged to prove the dependence of judges on the Executive power, and that the limitation in the Constitution upon the power of removal, applies only to the President, drawn from a principle which exists in all monarchical governments; that principle is, that the Judicial authority is only an emanation from the Executive power, and a branch of it. Sir, gentlemen who have repeated this principle appear to be insensible that it has no application to the form of government in this country. In unlimited monarchies, it is true, the Legislative, the Executive, and the Judicial powers, are all united in the same person. The monarch makes the law, decides upon it, and carries it into execution. This constitutes the essence of despotism. In limited monarchies, such as that of England, the Legislative power is at this time in reality separated from the Executive; and, although the Judicial power remains still nominally united to the Executive, and was so in fact before the Revolution, yet, in effect, the act of Parliament, which renders the judges independent, has separated this department from the Executive power; and, in this country, pursuing the great object of rendering the three departments of government independent of each other, we have, as well in our National as State constitutions, provided that these departments should not depend upon or be subordinate the one to the other. The theory of our Government supposes that the department which enacts the law should neither expound it or carry

FEBRUARY, 1802.

Judiciary System.

H. OF R.

it into execution; that the department whose province it is to expound the law, should not be entrusted with its execution. By assigning to each department in this form its distinct duties, and establishing the independence of each, in the exercise of its appropriate functions, we have attained, if the principle is preserved, more security against the power of oppression, than any nation ever enjoyed. The Legislature may pass unconstitutional laws, depriving the people of rights which the Constitution has guaranteed; but these laws can never be executed so long as an enlightened and independent court remains to expound them.

The ambition of an unprincipled First Magistrate may desire the ruin of individuals who are opposed to his ambitious projects; but the vengeance of Executive power can never reach the man of virtue, so long as he is protected by the courts of his country. Gentlemen, then, who attempt to engraft upon our Constitution the theory of monarchies, ought to learn that they do not apply to our form of government, and that the expression of the Constitution which was designed to give independence to the judges, could not have been designed to guard the judges against the Executive more than the Legislative power. Its object was to render the Judicial a distinct department, and to leave the judges, without the fear of removal, to exercise their legal and Constitutional powers.

Gentlemen have likewise said, that our theory destroys itself; that, whilst we are supporting the independence of the judges, we admit that they are exposed to an impeachment by one branch of the Legislature before the other, on which they may be found guilty of misdemeanors, and expelled from office; and that the fear of impeachment will operate more strongly upon the passions, render them more submissive to the Legislative will, and more effectually destroy their independence, than the power of removal claimed under the present bill. To this consideration, I answer, that a judge can only be removed upon impeachment, by the concurring voices of two-thirds of the members of the Senate; and if the period ever should arrive when a majority of the House of Representatives should become sufficiently corrupt to go into the Senate with an impeachment against a virtuous judge, and two-thirds of that body should be found base enough to support it, it will then be of little importance what becomes of your courts or your judges. The form of Government which we have established can never survive the corruption of that day; and when depravity shall have gained so strong a foothold in the Legislative department, the whole political body must be contaminated; and, instead of being the citizens of a free Government, we shall be fit only to be the slaves of a master. Sir, the Constitution, by requiring that a majority of the House of Representatives and two-thirds of the Senate shall concur in an impeachment and conviction, has secured to the judge his independence in ordinary and in violent times; but it was impossible to secure him against the convulsions of a re-

volution, or the more certain effects of total degeneracy and corruption.

Again, it is said that the power of the Legislature to vary the jurisdiction of the judges, and to create new courts, may be used to destroy their independence, and whilst we admit the existence of that power, we may as well admit all that the bill claims. Sir, I have two answers to give to the argument. The argument itself is drawn from a supposed abuse of power, which can never be admitted in any deliberative body, because it goes to the destruction of all power, for all power may be abused, and therefore no power ought to exist. But a consideration perhaps more conclusive is, that an abuse of power in the case stated can never take place unless attended with circumstances so violent as to appal the intrepidity of any Legislature. And again, the evil will, in some measure, correct itself. For, if you diminish the jurisdiction of your old judges, and confer their important powers on new judges, who may be taken from the prevailing sect, the consequence will ordinarily be, that your new judges, having obtained the object of their ambition, being removed by their independence beyond the power of their own party to remove them, will find it for their own interest to administer justice according to their best discretion, so that the principle of independence which we contend for, will, in its operation, correct that abuse of power, which might otherwise prove so destructive.

I have now, Mr. Chairman, noticed all the arguments which occur to me, and which have been urged in support of the present bill, and I hope shall be pardoned, if, upon this all-important occasion, I again turn back to the emphatic words of the Constitution, on which we principally rely. "The judges both of the supreme and inferior courts shall hold their offices during good behaviour." If words so explicit in their meaning, if an expression so well understood by every capacity, can be construed away, by the metaphysics of the day, with much more ease may we ourselves, or our successors, remove, by construction, every barrier which limits the power of the Legislature. It is declared in the Constitution, that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808. If this spirit of construction is admitted, how easy will it be for gentlemen to say migration or importation does not mean introduction; and that Congress may prevent the introduction, although they could not prohibit the migration or importation, and in this mode the security of the States will be entirely destroyed. Acts of attainder may not be passed; but gentlemen may hereafter say, that an act to confiscate the property of an individual, and to banish him to a foreign country, under pain of death, if he return, is no act of attainder, and within the powers of Congress. A capitation tax can only be laid by an apportionment among the States; but it may be said that a tax upon all persons able to carry arms, is no capitation tax within the meaning of the Constitution, and may be laid without an ap-

portionment. No money shall be drawn from the Treasury without an appropriation by law; but your President may hereafter say, that this does not extend to money in the hands of collectors. In fine, there is not a prohibitory clause within the Constitution which may not be evaded, if this spirit of construction is tolerated.

Sir, do gentlemen see the extent to which they are going? Do they see in this bill a principle which goes to prostrate all State authority; which goes to demolish every department, except that of the Legislature, and to concentrate all power within these walls? Gentlemen must pardon me when I entreat them not to abandon the plain meaning of terms; if we suffer ourselves to be seduced into this wide field of conjecture and construction, your Constitution will retain no more certainty than the wind; its value will become less than the paper on which it is written.

I should now close the observations which I had to submit to the Committee upon this interesting question, had not the gentlemen on the other side of the House thought proper to involve in this debate a discussion of several topics, not necessarily connected with the subject. These topics have been urged, undoubtedly, with a view to influence the decision of this question, and, although I cannot see their application, yet I am not disposed to set up my discernment as the standard of infallibility, and shall therefore now pay due respect to the path which those gentlemen have marked out.

The gentleman from Virginia, (Mr. GILES,) as an apology for the extensive range which he has taken upon this occasion, has informed us that one act of the last session was but a single link in one great chain of the political measures, and for the purpose of understanding this particular measure, it became necessary to review the whole chain of political events.

The gentleman begins his remarks, by saying that two parties have existed in this country from the commencement of the present Government; the one, what the gentleman has been pleased to denominate a party of energy, and the other a party of responsibility; the first, disposed to go forward with the affairs of the Government with energy, as they deemed right and expedient, and the other only in submission to the public will. Sir, it can be no news to the members of this Committee that two parties exist in this country, nor can gentlemen be ignorant that two parties did exist in the nation at the adoption of the Constitution; the one consisting of its friends, and the other composed of its enemies; nor is it necessary for me to say how the present have grown out of these original parties. It is sufficient for my present purpose to say that the parties alluded to by the gentleman from Virginia, are characterized by prominent features, and cannot easily be mistaken. Some of these features I will describe, and leave to the decision of the Committee which party really deserves best of the community. One great feature which has characterized those whom the gentleman has been pleased to denominate the party of energy, has been their strong attachment

to the present Constitution; and a determination not only to leave each department to the exercise of its proper functions, but to support them in it. Their opponents, to say nothing of their attachment to the Constitution, have on the contrary been disposed to bring all the powers of the Government into the House of Representatives, and in that way to strip the other branches of their Constitutional authorities. This was attempted some years ago in a very interesting question, which related to the British Treaty. For although the Constitution had expressly delegated the treaty-making power to the President and Senate, yet the gentleman from Virginia and his friends were determined to grasp it for the House of Representatives. Pursuing the same spirit of hostility to the other departments, the gentleman and his friends are at this time attempting to make an inroad in the Judicial department, and to bring in effect the powers of that department into this House.

Again, this party of energy was disposed to establish and support public credit, in which their opponents did not agree. This party of energy was likewise determined to defend their country against the hostile attacks of the enemy, and to support the interest, the safety, and honor of the nation; their opponents, on the contrary, were disposed to prostrate everything that was dear, to the will of the enemy. One party was disposed to build up and support, while the other were, and still are, determined to pull down and destroy. The spirit with which this determination is pursued will appear, from the allusions which have been made to the most prominent measures of the former Administration.

The public debt has been spoken of, and it has been charged as a crime that these solemn engagements, which were the price of our independence, and for the discharge of which the national faith was pledged, have been provided for by the old Administration. Sir, are we to understand that this crime is to be ultimately atoned, by wiping out the debt with a sponge? Surely the gentleman cannot intend this, and yet I can give no other solution to the remark.

The Indian war has also been alluded to in very extraordinary language, as an event which was greedily seized to enlarge the field of Executive patronage. Sir, the gentleman cannot intend to insinuate that the Indian war was excited by the Administration; the causes which produced that war are too publicly known to be forgotten or misunderstood. And has it indeed, at this time, become criminal for the Government to defend the inhabitants of our frontier from the attacks of the savages?

The gentleman has likewise told us that the depredations upon our commerce by the Barbary Powers, and by the French cruisers, was made a pretext for commencing a Naval Establishment, and in this way of extending this bugbear of Executive patronage. Sir, this remark gives me no surprise. I know perfectly well, that there is a party in this country who are opposed to our commerce and to our navy. I shall long recollect the depredations which were made upon our commerce

FEBRUARY, 1802.

Judiciary System.

H. OF R.

by the French, and the difficulty with which gentlemen were persuaded to repel those depredations. I cannot forget that before they would consent to our first measure of defence, that the cruisers of France were capturing your ships within the Delaware bay. It is certainly true that the old Administration was neither the enemy of commerce, nor of the navy; and it is as certainly true that they were equally disposed to defend your citizens against Algerine slavery, and the depredations of France. And to merchants and seamen of this country, and the community at large, I am willing to refer the question, whether it was proper to surrender our commerce to the enemy, and give up our seamen to slavery, or defend both by an adequate Naval Establishment?

Gentlemen have complained of the haste with which the last Judiciary act was passed; but when gentlemen indulge themselves in these suggestions, they ought to examine whether the fact of which they complain has really existed. They ought to recollect that the journals of this House will decide this point, and that by these journals it will appear that this very law, in its principles, was under the consideration of Congress for two sessions; that the subject had for years been contemplated by the members of the Legislature, and that no act of the Government (unless we except the act of bankruptcy) was ever passed with more deliberation.

There was, however, one circumstance attending the passage of this law which in the opinion of the gentleman from Virginia (Mr. GILES) cannot be excused: the law received the signature of the President whilst the House of Representatives were engaged in the late Presidential election. The gentleman has indulged himself, by saying that this obnoxious law was approved by the President whilst the House of Representatives were engaged in the election of a Chief Magistrate, and, influenced by the violence of party, were attempting to defeat the public will. Sir, what does the gentleman from Virginia intend by these declarations? Are we to understand that the determination is now avowed on this floor, which we have heard so often repeated beyond the walls of this House, that no man but a Virginian is hereafter to become a President of the United States? And are we indeed reduced to this, that the members of this House, when exercising the sacred right of suffrage, on one of the most important occasions which can ever arise, are to be charged with attempts to defeat the public will, because they would not consent to violate their consciences, in voting for a particular candidate merely because he lived on the other side of the Potomac? Sir, this language may perhaps accord with the sentiments of this meridian, but give me leave to tell the gentleman from Virginia, that it will not be relished by one part of the United States, and give me leave further to say that there are States in this Union, who will never consent, and are not doomed to become the humble provinces of Virginia.

Sir, I consider the question we are now about to decide, as more important than any which ever

occupied the attention of the National Legislature. The Constitution has guarantied to the people of this country an independent Judiciary, but the moment the bill on your table becomes a law, that independence is gone, and your courts become the passive agents of the Legislature to execute its commands. And whatever may be said on this subject, it is impossible to prevent the members of this Committee and the people of the United States, from tracing this destructive measure back to the fountain from whence it has proceeded. Who recommended a revision of the act of the last session? Who sent us the document on which gentlemen have predicated so many of their arguments? Who, sir, but the President of the United States? on whose head must fall the whole weight of responsibility for this invasion of the Constitution.

Before I sit down, permit me once more to appeal to the intelligence, and to the patriotism of the members of this Committee. Permit me to say that there is no middle ground between a government of laws and a government of men; that the former can only be supported by an independent Judiciary, and if by the passage of this bill you destroy this only barrier, the people of the country are left at the mercy of a host of despots, whose will is law, and whose enmity is death.

Mr. MILLEDGE said, he hoped the Committee would spare him a few moments of their time, that he had no intention of saying a word on the important question before them, and meant to have contented himself by giving a silent vote; but as some remarks had fallen from the gentleman from South Carolina, (Mr. RUTLEDGE,) in the course of his argument delivered yesterday, respecting the removal of a postmaster in the State he had the honor to represent, that for the present he would pass any explanation by on that subject, and, as he was drawn on the floor, he conceived himself bound to make some few observations on the bill now under consideration, that his constituents might know what guided him in his vote; that it was useless on any other score; that the subject was exhausted; nor had he the vanity to suppose that anything that should drop from him would influence a single member; that from the doctrine held by gentlemen who differed from him on political points, he was one of those on that account who solemnly believed that the passage of that bill, as handed by the Senate, fixed a principle as to the Judiciary, on which, in his opinion, depended the liberty, property, and happiness of his country. He stated that, though true, it was imperative on the first Congress to establish a national Judiciary, it certainly was also true that all their plans were speculative. He said, let it be supposed for a moment that, in forming that system, they had made sixteen circuits and assigned duties to sixteen judges; that instead of two courts of appeal within the year, they had made four; that when this theoretical system had become tested by experience, it was found that the interest of the nation in that department could be as well and better conducted by having only six circuits and six judges, and by two courts of appeal instead of four. Would not Congress have the

right to modify the law to meet the general welfare in that respect? It is not denied nor brought into question but that they have the power of extending the courts; then surely they have the same right to abridge. But it is said that the judges, when once appointed, hold their office during life, from the tenure of their commission being during good behaviour, and receive for their services a compensation which shall not be diminished during their continuance in office; and, independent of the power that gave them existence, except by impeachment. He said, he admitted that it was true, to a certain extent, they were independent of the Executive, because his whim and caprice could never affect them; they were independent of the Legislature for they could not constitutionally pass a law to remove an individual judge or judges from office; that the Legislative power was confined to the system of jurisprudence by which the general welfare of the nation was to be consulted either to extend or abridge; that in case of abridging, and courts were abolished, the duties are taken from the judges, therefore they cannot receive compensation, for they have no service to perform; they are not independent of the law, but depending for their existence as judges on the law: when the law goes down, they tumble with it; that on the subject of the rightful and necessary independence of the judges, that so much had been said about, that it had been long his opinion that our late great and virtuous President, WASHINGTON, had surely been ill-advised when he took from the bench of judges the Chief Justice, Jay, and sent him not on a Judicial but a diplomatic errand, when it was afterwards followed up by the late Administration in sending a similar high character, on a similar errand; then it was, and not till then, that the independence of the judges became prostrated not by Legislative power, but to the Executive authority under the influence of its patronage. Mr. M. said that, on the subject of expediency, he was one of those who always thought it was the interest of the nation to lessen, by every means in its power the foreign connexions; that we are at peace with all the world except the Barbary Power, Tripoli, whose trade is war—and peace in Europe; that it was fair to presume, for those reasons, that few cases would come before the national courts, on what is called the law of nations, and that the Constitution gives a right to foreigners as well as citizens of a different State to sue in the Federal courts: that the animosities and prejudices that grew out of the war for our independence would daily abate; that the right of action in these courts should by degrees be narrowed, from a persuasion that the State courts administered justice as ample and as speedily as the national courts; that as to foreigners and citizens of different States not being able to obtain complete justice in the State courts, that argument could now have no possible weight; that, on the contrary, it always appeared to him that strangers from whatever quarter they might come, if they brought with them a good character, always met with a partial leaning of the citizens in their favor; he therefore

thought that the old system, with a few amendments, was commensurate to all the objects of national jurisprudence. Mr. M. said, that he had discovered that gentlemen, throughout the discussion of this important question, had read considerably from newspapers and other writings, he hoped he might be indulged in turn; that he had been favored with extracts from two letters, sent to an honorable member of the Senate from no less characters than Governor McKean and the celebrated John Dickinson, the Pennsylvania farmer. Governor McKean's letter says:

"The vote of the Senate of the United States on the question for repealing the late Judiciary law accords with my sentiments, as it seems to have been contrived and executed rather to serve the interest of a few zealous partisans than the people at large. That a Legislature have the power at a subsequent session to repeal any act passed before, cannot admit of much doubt in a reflecting mind; the same power that creates can assuredly annihilate, where there is no Constitutional impediment; an office may be abolished when it shall be deemed mischievous or unnecessary, though the officer may not otherwise be removable, but after the conviction of some misdemeanor, and when there is no existing office, there cannot be any officer to execute it, both are nonentities."

Mr. Dickinson writes thus:

"It seems to me that there should be the clearest and strongest provisions made against any ingraftment of any elements or powers from principles of common law upon the specified, limited, delegated, defined authorities, confided by the several States to the Union; how has the understanding of united America been insulted by sophistical argumentations drawn from this source, and from the paragraph of the eighth section of the first article of the Constitution to reconcile us to boundless powers in the Federal Government, (a danger against which the framers of that Constitution strove with the utmost anxiety to guard such assumptions,) which would turn judges into legislators, and trustees into usurpers. I had rather that the whole Judiciary system of the Union should be abolished than that it should exist with those dangerous pretensions, threatening perdition to our best securities against future oppressions; they will entangle us in endless labyrinths of confusion. Is it not very extraordinary that, under our Constitution, judges should declare the nation to be in a state of war, when the Legislature is silent on that momentous point?"

Such, Mr. Chairman, are the sentiments of those two venerable patriots, statesmen, and lawyers; our country can claim none higher in the possession of those qualities. What more, then, can be said on the subject? It forecloses all argument. The gentleman from South Carolina (Mr. RUTLEDGE) had said that, in looking over a newspaper that he had before him, it appeared that even a postmaster in Georgia had been turned out of office because he was a printer, yet the person denies his being a printer. Mr. M. observed that, so far as respected himself being brought into question by the publication alluded to, he felt no hesitation to declare the part he had taken on that occasion. He said he had mentioned that the editorial part of the paper, called the *Augusta Herald*, was supposed to come from the pen of

FEBRUARY, 1802.

Judiciary System.

H. OF R.

Mr. Hobby; that he was not the mechanical operator; that the press was generally considered to be under his control, and that that paper teemed with invective against the principal officers of the present Administration. Mr. M. further observed that, as the gentleman (Mr. R.) had passed into the State he had the honor to represent in search of matter for his argument, he begged he might be permitted, in turn, to view him a little within his own limits; he had informed the Committee that the vote he had given for President, which was a blank, he had the gratification to think was not only conformable to his own feelings, but he believed to those of the people of South Carolina. Mr. M. said, he hoped he did not misquote the gentleman. That the Committee had been favored with much newspaper information; he also sometimes read newspapers, and in one he had seen an account of the decided disapprobation of some of his fellow-citizens in South Carolina for his blank vote. He would ask that gentleman whether his country had not on a former occasion called on him within his State to exercise a similar duty, and whether he then put in a blank, or whether he voted for "a man of the people, a demagogue;" a man of plain and simple attire without a "Mister before his name—An Oliver Cromwell?" If he did, he left to the gentleman's own reflections the propriety of what fell from his lips yesterday.

FRIDAY, February 26.

The SPEAKER laid before the House a letter from William Henry Harrison, Governor of the Indiana Territory of the United States, enclosing certain resolutions of the grand jury of the county of Knox, in the said Territory, at a term of the court of general quarter sessions of the peace, held for the said county, in the present month, asserting the rightful claim of the Territory aforesaid to the island of Michilimackinac, and its dependencies, as an integral part of the said Territory, in opposition to the claims of the Government of the Northwestern Territory to the same; which were read, and ordered to be referred to Mr. THOMPSON, Mr. DENNIS, and Mr. DICKSON; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*Gentlemen of the Senate, and
of the House of Representatives:*

No occasion having arisen, since the last account rendered by my predecessor, of making use of any part of the moneys heretofore granted to defray the contingent charges of the Government, I now transmit to Congress an official statement thereof, to the thirty-first day of December last, when the whole unexpended balance, amounting to twenty thousand nine hundred and eleven dollars and eighty cents, was carried to the credit of the surplus fund, as provided for by law; and this account consequently becomes finally closed.

TH. JEFFERSON.

FEBRUARY 25, 1802.

The said Message was read, and, together with

the official statement referred to therein, ordered to lie on the table.

Another Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

*Gentlemen of the Senate, and
of the House of Representatives:*

Some statements have been lately received of the causes decided or depending in the courts of the Union, in certain States, supplementary, or corrective, of those from which was formed the general statement accompanying my Message at the opening of the session. I therefore communicate them to Congress, with a report of the Secretary of State, noting their effect on the former statement, and correcting certain errors in it, which arose partly from inexactitude in some of the returns, and partly in analyzing, adding, and transcribing them, while hurried in preparing the other voluminous papers accompanying that Message.

TH. JEFFERSON.

FEBRUARY 26, 1802,

The said Message, and the documents accompanying it, were read, and ordered to be referred to the Committee of the Whole to whom was committed, on the fourth instant, the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

JUDICIARY SYSTEM.

The House then went into Committee on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. NICHOLSON.—I lament, Mr. Chairman, that I am under the necessity of rising at this late hour. As I am fearful the patience of the Committee is well nigh exhausted. I am sensible that the uncommon length of the discussion has left me but a very narrow ground to tread on; but as the question has become highly important, from the Constitutional objections which have been started, I will venture to solicit your indulgence while I offer some remarks that appear to my mind applicable to the subject now under consideration.

The very uncommon direction which has been given to the debate, will, I trust, be a sufficient apology for my noticing a variety of observations made by gentlemen on the other side of the House, which have no connexion with the bill on the table. I should have felt a singular pleasure in following the honorable member from Connecticut, (Mr. GRISWOLD,) but for his concluding remarks. In the anterior part of his speech, that gentleman kept his eye steadily fixed either upon the expediency or constitutionality of the question, and did not indulge himself in those wanderings of the imagination, which so eminently distinguished his friends who have preceded him; but the close was marked with a shameful virulence, calculated to excite indignation and not to convince the understanding.

Sir, when I am told that the party advocating this repeal have grown out of the party originally opposed to the Constitution, and are now about to prostrate it, I feel more than I am willing to ex-

press; but when gentlemen talk about parties in this country, permit me to turn their attention to an earlier period of our political history; to that period when our liberties and independence were at stake, and when every nerve was strong to resist the encroachments of tyranny. At this time where were many of that gentleman's political friends? Upon examination it will be found, that many of them basely deserted their country in her distress, and were openly fighting in the ranks of her enemies. In the list of my political friends, none such are to be found, for we do not require their support. But I can look about me, upon my right hand and upon my left, and can see men, even upon this floor, advocating the present bill, who bore the burden of the Revolutionary war, who drew their swords to establish the independence we now enjoy, and who will not hesitate to draw them again, if those threats are carried into execution which have been recently thrown out against the Constitution. I know men too, equally distinguished for their talents and their virtues, friendly to this repeal, who signed the Constitution as members of the General Convention, who used every effort to promote its adoption, and who, I have no doubt, are ready to defend it, to the last moment. There are men likewise, and gentlemen dare not contradict me, who refused their signatures to the Constitution as members of the General Convention, and who opposed it in every stage of its adoption, but were afterwards received into favor, and were high in the confidence of the former Administration. Which of these two descriptions of persons are most likely to cherish the Constitution, I cheerfully leave to the American people to decide. It is extremely possible that some of my political friends were opposed to its adoption, without certain amendments at that time urged with great force, because they thought the liberties of the nation not sufficiently secured; and I wish I could say that no events have since taken place to justify the uneasiness which at that time existed. A recurrence to some of those events by my friend from Virginia (Mr. GILES) has been warmly commented on, and he has been charged with introducing subjects which have formerly excited irritation, for the purpose of catching the popular ear. I trust I shall be pardoned for saying that, in my judgment, a recurrence to those events was in a great measure rendered necessary, by the unjustifiable remarks with which the debate was opened by a gentleman from North-Carolina, (Mr. HENDERSON.)

Let it be recollected, sir, that a few days past, when the gentleman from Delaware (Mr. BAYARD) was begging for a postponement of the bill for a week only, he promised for himself and his friends that if we would indulge them, they would meet us with calmness, and would proceed to the discussion with a spirit of Christian meekness. After the postponement was consented to, and after this voluntary promise, I came to the House with an expectation of hearing the subject discussed with that coolness and deliberation which are truly desirable in the investigation of truth; but

I soon discovered that this expectation was vain and illusory; that the expected calm had roused itself to a whirlwind, and the spirit of Christian meekness was transformed into a spirit of anger and crimination.

The gentleman from North Carolina, who opened the debate, forgetful of the promise which had been made for him by his friend from Delaware, commenced an unwarrantable attack upon a majority of the House, by declaring that on the seventh of December the same spirit of innovation had entered these walls, which had laid waste the fairest portions of Europe; that it was now about to tear down all the valuable institutions which had been erected by former Administrations, and even to destroy the Constitution itself. Did gentlemen imagine that such observations were to pass unnoticed? Did they suppose that we would sit tamely down under an imputation at once so heavy and so groundless? Was it not natural that we should go back and look into the nature and origin of those measures which had been denominated the fairest institutions, and which the gentleman had particularized as the debt, the taxes, the Judiciary, and the Mint? Yes, sir, the gentleman from Virginia did take a view of these fair institutions, and did show, whatever might have been the motives of their authors, that their inevitable tendency was to strengthen the power of the Executive. It is this undue influence of the Executive power of the Government that we wish to reduce; it is this influence that we wish to confine within its proper limits, in order to prevent the Government from taking that course which most Republican Governments have heretofore taken; to prevent it from arriving at that goal where the spirit of republicanism is lost, and monarchy commences. Permit me to ask the gentleman from Delaware if he was serious when he said there were no friends to monarchy in this country? Does he not recollect a proposition that was made in the General Convention, when our present Constitution was framed? And does he not recollect by whom that proposition was made? The form of Government contained in that proposition bore, indeed, the name of a Republic, but was marked with the strongest features of monarchy and aristocracy. The Chief Magistrate and Senate were to hold their seats during good behaviour, or, as gentlemen now contend, for life; the Chief Magistrate was to have an absolute negative on all laws, and the sole direction of war, after its commencement; the Senate to have the exclusive right to declare war; the Governors of the respective States to be appointed by the General Government, and to have an absolute negative on the laws of the States. All the militia of the States was to be under the direction of the General Government, by whom the militia officers were to be appointed. The immediate representatives of the people were to be chosen for three years, but their powers were not defined; it is certain however, that they could pass no laws which were not under the control and subject to the rejection of the Senate and Chief Magistrate, who were placed above all re-

FEBRUARY, 1802.

Judiciary System.

H. OF R.

sponsibility to the nation. When I say "all responsibility," I mean not to forget that they were liable to impeachment for corrupt conduct in office; yet it may be remembered, and the history of other nations warrants the opinion, that rulers may be guilty of ten thousand oppressions, without the possibility of proving that their conduct was founded on corruption. These impeachments, too, were to be tried, not by persons holding their appointments from the people, or responsible to them, but by the chief judge of each State, who it was expressly provided should hold his office during good behaviour. That this proposition was made, no gentleman will doubt; or if a doubt rests on the mind of any man, I refer him to members of the General Convention who are now present, and who agree in political opinion with our opponents. I venture to hazard the assertion, that the information I have given will be found to be correct, because I have derived it from the most authentic source—from members of the Convention, in whose hands copies of the plan are now to be seen, which were taken by them at the time. If, however, my information is incorrect, there are gentlemen now in my view who can furnish the means of setting me right, and I call upon my adversaries to contradict me upon any authority whatever. But, sir, I have no apprehension that I shall be contradicted; gentlemen are too well acquainted with the fact to risk a controversy about it; for it has been published and commented on in every State of the Union, and never has been denied. Among other publications, I have one in my hand, of an official nature, given to the world by a member of the Convention in his official capacity, and bearing an authenticity that is not to be disputed. It is, sir, a communication made in the month of January, in the year 1788, to the Legislature of Maryland, by Luther Martin, Esq., one of the delegates from that State to the General Convention, in which he assigns his reasons for refusing to sign the Constitution. After having said that there were three parties in the Convention, with different views and sentiments, he proceeds, in the tenth page:

"One party, whose object and wish it was to abolish and annihilate all State Governments, and to bring forward one General Government over this extensive continent, of a monarchical nature, under certain restrictions and limitations. Those who openly avowed this sentiment were, it is true, but few, yet it is equally true that there was a considerable number who did not openly avow it, who were, by myself and many others of the Convention, considered as being in reality favorers of that sentiment, and, acting upon those principles, covertly endeavoring to carry into effect what they well knew openly and avowedly could not be accomplished."

After this, let no man doubt that there are advocates for monarchy in this country, and advocates too who have been high in the confidence of the nation; for we have been told that they were members of the General Convention, and were anxious to give the essence of monarchy to that Constitution under which we now live. Nor should it be forgotten, that we have heard from another

authority, at one time at least very much respected by federal gentlemen, that a monarchical Government with an aristocratic and a democratic branch, was not only a Republic, but the best kind of Republic.

But, Mr. Chairman, if there are friends to monarchy in this country, who think that the nature and constitution of man will bear no other form of Government, it is not for me to censure them. I thank God we are free, and that there is no more persecution for political than religious opinion. Yet while I refrain from censuring, I will also take the liberty of saying that I never will trust those who entertain such opinions, but will at all times use my endeavors, feeble as they may be, to correct such of their errors as in my judgment may have an injurious operation either upon the Government or the nation.

When we attempt to correct these errors, let us not be told that we are about to prostrate the Constitution. The Constitution is as dear to us as to our adversaries, and we will go as far to support it. It is by repairing the breaches that we mean to save it, and to set it on a firm and lasting foundation, that shall resist the attacks of its enemies, and defy the encroachments of ambition. We are yet a young nation, and must learn wisdom from the experience of others. By avoiding the course which other nations have steered, we shall avoid likewise their catastrophe. Public debts, standing armies, and heavy taxes, have converted the English nation into a mere machine to be used at the pleasure of the Crown. After having struggled nearly six hundred years for their liberties, they now find themselves almost at the same point from which their ancestors set out. This is not barely an opinion of my own, formed upon cursory observation, but is sanctioned by the authority of a universally admired writer, known to most of us. Sir William Blackstone, in the fourth volume of his valuable commentaries on the laws of England, speaking of the various reductions that have been made in the prerogative of the Crown since the Revolution of 1688, and the consequent apparent advantages derived to the nation, uses a language which I fear is too applicable to our own situation:

"Yet, though these provisions have in appearance, and nominally, reduced the strength of the Executive power to a much lower ebb than in the preceding period, if, on the other hand, we throw into the opposite scale (what perhaps the immoderate reduction of the ancient prerogative may have rendered in some degree necessary) the vast acquisition of force arising from the riot act and the annual expenditure of a standing army, and the vast acquisition of personal attachment, arising from the magnitude of the national debt, and the manner of levying those yearly millions that are appropriated to pay the interest; we shall find that the Crown has gradually and imperceptibly gained almost as much in influence, as it has apparently lost in prerogative."—p. 440.

Mr. Chairman, if a man acquainted with the history of our Government, would attend to the remarks just read, he would suppose that this was the chart by which our political course had been

steered. It is true we have had no riot act, but we have had a Sedition act, calculated to secure the conduct of the Executive from free and full investigation; we have had an army, and still have a small one, securing to the Executive an immensity of patronage; and we have a large national debt, for the payment of the principal and interest of which it is necessary to collect "yearly millions," by means of a cloud of officers spread over the face of the country. By repealing a part of the taxes from which a part of this money has been raised, we not only lessen the burdens of the people, but we likewise discharge a large portion of those officers who are appointed by the Executive, and who add greatly to his influence.

This debt, which now hangs as a dead weight about us, has been called the price of our independence, and has been spoken of as a debt due to the "war-worn soldier," which we assumed and funded to alleviate his sufferings. This position I cannot assent to. When the veteran soldier returned from the fatigues and hardships of the war, to enjoy domestic comfort, he brought with him, as an evidence of the service he had rendered, nothing but his certificates and his wounds. They were, indeed, honorable testimonials; the latter he felt would remain with him while life lasted, and the former he held with the hope that, one day or other, his country would be in a situation to pay him; but the hard hand of poverty pressed upon him, and stern necessity compelled him to part with them for a pittance. The rich and cunning speculator, who had sheltered himself from the storm, now came out to prey upon his distress, and, for two shillings and sixpence in the pound, he purchased this poor reward of toil and hardship. When you were about to make provision for the payment of this debt, you were called on, loudly called on, by the voice of humanity, by the spirit of justice, to make a discrimination in favor of the soldier. He asked you to give to the speculator what the speculator had advanced; but to give the balance to the poor, though valiant soldier, who had faithfully earned it in the frozen regions of Canada, or the burning sands of South Carolina; you regarded him not; to his tale of distress you turned a deaf ear; his services and his sufferings were forgotten; the cold and hunger he had endured, the blood he had spilt, were no longer remembered; you cast him upon the unfeeling world, a miserable dependent upon charity for subsistence. Let not then the gentleman from Delaware call this debt the price of our independence, or a compensation to the war-worn soldier. To him it was a poor compensation indeed. Its effect was to intrench yourselves around by rich speculators, whose interest and influence you secured, and who would be ready to support you in any measures, provided you would insure them the payment of the interest on that debt, which was funded for their benefit, but which was created at the hazard and expense of a brave and meritorious soldiery. From motives of a shameful policy you enabled the proud speculator to roll along in his gilded chariot, while the hardy vete-

ran, who had fought and bled for your liberties, was left to toil for his support, or to beg his bread from door to door.

But this debt, iniquitous as we deem the manner of its settlement, we mean to discharge; but we mean not to perpetuate it; it is no part of our political creed that "a public debt is a public blessing." We will, I trust, make ample provision for its final redemption; and when in a few days a proposition shall be submitted for the annual appropriation of seven millions and three hundred thousand dollars to this object, I challenge gentlemen on the other side of the House, who express so much anxiety about public faith, to be as forward in support of this measure as I shall be. We will then show to the American nation who are most inclined to support the public credit; whether those who are desirous of paying the debt, or those who are anxious for its perpetuation.

The member from Delaware told us that the gentleman from Virginia (Mr. GILES) after exhausting one quiver, had unlocked another and discharged it upon the judges; those judges whose victims he has never heard of. If that gentleman has never heard of a judge's stooping from the bench to look for victims, I have. Let me direct his attention even to his own State. Let me ask him if he has never heard of a judge commanding the district attorney to search a file of newspapers, in order to discover something upon which a prosecution might be grounded? Let me ask him if that judge did not detain the grand jury at a busy season of the year, for the avowed purpose of finding an indictment, not upon any fact known to the judge, but upon a mere report which the judge had heard, that there was a seditious paper printed in the State. This looks like stooping from the bench to search for a victim. But the gentleman from Delaware looks to the Executive for victims—for those widows and orphans who demand the commiseration of the people. Mr. N. said he could not conceive how widows and orphans could be affected by the Executive, for he did not know that widows and orphans had been dismissed from office, as he never had understood that it was usual to give them appointments. He had heard that some persons had been dismissed for being public defaulters, and others for revolutionary torism; but he had not heard that any had been dismissed for refusing to sign an address offering up adulation to Presidential vanity. He had indeed understood that two men had been restored to office, who were dismissed under a former Administration for this crying sin. But why all this uneasiness about dismissals from office? Have the friends of gentlemen heretofore been so eager in their pursuit of the loaves and fishes, that they are now unwilling to surrender them? Have they enjoyed them with such peculiar delight, that they now murmur at the exercise of the Constitutional right which the President possesses of displacing from office all those whom he thinks unfit for the duties, and of putting in those who, in his opinion, are better qualified? Surely when gentlemen are so strenuously

FEBRUARY, 1802.

Judiciary System.

H. OF R.

contending for the Constitutional rights of the Judiciary, they ought not to murmur at the exercise of a Constitutional right by the Executive. Nor do I think they can with any propriety complain, when it is recollected, that although the President had the power of disposing of all offices, yet he has left by far the larger proportion in the possession of men who are personally and politically his enemies. From the great discontent expressed on the subject of removals, it might seem that the judges themselves were rather the objects of general solicitude, than the system or Constitutional privileges of the Judiciary.

This Judiciary, however, the gentleman from Delaware has said, in that same spirit of Christian meekness which appears to have characterized him throughout, he never considered a sanctuary, because he knew that nothing was sacred in the eyes of infidels. May I be permitted to ask, what the honorable gentleman means by infidels? The expression excited some degree of surprise, because, as the gentleman had, on a former occasion, talked so much of Christian meekness, I had flattered myself that he felt some little of Christian charity. The hope, I fear, was a vain one. The honorable member and his friends are orthodox; we and our constituents are heretics. If, sir, an unqualified aversion to the high-fashioned opinion, that a public debt is a public blessing; if a total unbelief in the propriety of laying heavy and oppressive taxes, to pay a useless and expensive army; if the strongest reprobation of every law calculated to restrain the liberty of the press, and thereby prevent the nation from inquiring into its own concerns; if the entire rejection of the odious principle, that the reins of Government are to be placed in the hands of a set of men who are independent of and beyond the control of the people, afford any evidence of infidelity, then do I avow myself as much an infidel as any man living. And if Christianity and infidelity be the two principles, diametrically opposed to each other, it is most certain that the gentleman and myself are as far asunder as if we inhabited different hemispheres. He is a political christian, and I a political infidel. He offers up his sacrifices upon the altar of independent rulers; I bow at the wide distance I trust will ever be preserved between us, while the gentleman holds his present political creed.

Was there a man who did not feel the highest astonishment at the honorable member's doctrine in relation to the common law? Is there any one who believes with him, that "stripped of the common law, we have neither Constitution nor Government; that our Constitution would be unintelligible, and our statutes useless?" Sir, the gentleman tells us "we must leave it to the discretion of the judges to declare what belongs to us, and what is unsuitable." He says we have nothing to do with anything of a monarchical tendency; yet even upon his own ground this is a question for the discretion of the judges. Have the people of this country ever consented to vest the judges with this extensive discretionary power? Have they ever sanctioned the principle that the judges

should make laws for them instead of their Representatives? Is it not legislation to all intents and purposes, when your judges are authorized to introduce at pleasure the laws of a foreign country, to arm themselves with power? The American people never dreamed of such a principle in the Constitution, and never will submit to it. They never ought to submit to it. It is giving to the judges a power infinitely more transcendent than that vested in any other branch of the Government. The Legislature cannot recognise any principle of the common law having a monarchical tendency; yet this principle the judges may recognise, if you leave it to their discretion to introduce any part of the common law which they may think proper.

I have so often heard the gentleman from Delaware maintain upon this floor an opinion that the common law of England was the common law of the United States in their national capacity, and that therefore the Federal courts have a general common law jurisdiction, that I think proper to offer some remarks upon it, lest silence on our part should be construed into acquiescence.

Let us then examine this subject, and inquire when and how the common law was introduced into this country. The gentleman from Delaware supposes it was brought here by our forefathers at the time of their emigration. To this opinion I might oppose that of the celebrated Judge Blackstone, who, in the first volume of his Commentaries on the laws of England declares, in the most positive terms, that the American plantations were either ceded by treaties, or conquered from the natives; and that therefore the common law of England, as such, had no force or authority there; but wherever it is in force, it arises from their having ingrafted it into their own municipal regulations. [Mr. NICHOLSON read sundry extracts from the 106th, 107th 108th and 109th pages of 1st vol. of Blackstone, to show that this was the opinion of the learned Judge.] For this opinion, however, sir, of Judge Blackstone, I do not contend. I have seen it very powerfully opposed by able writers, and I think the usage and practice of the colonies themselves furnish a sufficient argument against it. It may perhaps be correct in its application to New York, New Jersey, Pennsylvania, and Delaware, which, I believe, were originally settled by the Dutch and Swedes, and were ceded to the English by the Treaty of Breda, in the year 1667. These were therefore conquered countries, and the common law of England could not have been brought into them by the original emigrants. It may have been since practised under in these States, but is indebted for its introduction either to express statute, or to common usage. It goes however to establish the principle for which I contend, that our forefathers brought with them no law having a uniform operation over all the extent of country now contained within the limits of the United States; for when gentlemen speak of a common law of the United States, they must mean a law uniform throughout the whole extent, and equally obligatory upon the whole nation. I entertain no

doubt myself that the common law of England, or so much of it as was applicable to their situation, was brought over by the original emigrants, to New England, to Maryland, to Virginia, and the other Southern States; and that it continued to be the law of the provinces until altered by their respective Legislatures. But it was the law of each province only, and not a general law operating upon the whole; for each was independent of the other, and the municipal regulations of the one could not bind the other. Thus the rule of succession to real estate by primogeniture continued in most of the provinces till about the commencement of the Revolution; but in Massachusetts, as early as the year 1648, they declared by law that lands should descend and be held in common among the children. In Virginia a *feri facias* could not be laid on lands, nor can it even at this time; but in Maryland this rule of the common law was changed by statute in the reign of George the Second, and lands were made equally liable to debts as personal property. In Massachusetts, blasphemy and perjury were made capital offences by their own statutes, neither of which were capital at common law, and their punishment has been otherwise provided for in other States, particularly in Maryland. The doctrine of forfeitures was entirely done away in Massachusetts by their own local laws, and traitors and felons were allowed to devise away their lands, goods, and chattels; while, in most of the other provinces, the forfeiture upon conviction and attainder continued as at common law. Numberless instances might be adduced, in addition to these, to show the total disagreement of the various changes made in the common law by the several Provincial Legislatures at different times; but I apprehend those mentioned are sufficient to convince any candid mind, that there was no general uniform law or rule of conduct operating upon the respective Colonies prior to their confederation for the purposes of general defence. Permit me likewise to remark, that even if the common law had remained unaltered by the several Colonial Governments, yet it could not have been considered as a uniform rule of law operating upon them as a nation, because each was independent of the other and had emigrated at different periods, while the common law of England was undergoing the most material changes by act of Parliament. The colonization of Virginia took place in the reign of Queen Elizabeth, that of Maryland in the reign of Charles the First, and that of Georgia in the reign of George the Second. In the intervening spaces of time, the common law had been greatly ameliorated; and if it is now to be insisted on as constituting the law of the United States, in consequence of its introduction by our forefathers at the time of their emigration, we should be at a loss to determine which of these periods we should fix on as that which was to give the character to the common law; whether it is to be the common law in force in the reign of Elizabeth, or the common law as ameliorated by statute, between that time and the reign of George the Second. I need not enter into a detail of these changes, for they will

readily occur to most gentlemen who hear me; but as very material changes were made, I think it cannot be contended that the law as existing at one period or the other could have any uniform operation upon the several colonies, who were, as to each other, independent States governed by their own laws, and without any connexion, common government, or general law, prior to the declaration of independence.

These observations have been made with a view of showing, that as British colonies, although each might have adopted the common law of England for its own purposes, yet each having adopted it at different periods, and modified it in various ways, there was no uniformity in the law; and even if there had been a uniformity, we were not a nation, and therefore could have no law common to the whole. These arguments would likewise apply to show that it was not adopted by the United States in their confederated capacity when they first took a rank among the nations of the earth, or in other words, when they declared themselves independent of Great Britain, and associated for the purposes of common defence. The object of this confederation was defence only, and not internal government. The States each became sovereign and independent, and reserved to themselves the power of self-government. Many of them, by their constitutions, adopted the common law as it had been modified by their own provincial statutes, and gave to their Legislatures the power of changing it whenever circumstances might require. Congress had no powers given to them: but everything was done by recommendation, and when afterwards certain powers were vested in Congress by the Articles of Confederation in 1781, they were of a general nature, relating to the war only, and nothing like an authority to establish courts or to grant judicial powers; and I think it would look like an absurdity to say that the common law of England became at that time the common law of the United States, when the only body representing the United States (that is, Congress) had no power to establish tribunals to carry this into operation. But, sir, I think it will not be seriously contended, that the common law of England became the common law of the United States, either as a consequence of the emigration of our forefathers, or by virtue of the Declaration of Independence, or by the Articles of Confederation. I shall therefore beg leave to examine another ground, which gentlemen may think more tenable.

We have been told by the member from Delaware, that without the common law the Constitution would be a dead letter. Every State in the Union, he says, has adopted it; and he asks why it is denied to the Federal Constitution? I could have wished that on this subject, as well as many others, the gentleman had offered us something like argument, instead of mere wild and arbitrary assertion. However highly we may estimate his talents, he must not expect that we are to yield to his political dogmas. We flatter ourselves that the Constitution may stand and flourish without those invigorating principles of the common law, which the gentleman is anxious to infuse into it.

FEBRUARY, 1802.

Judiciary System.

H. OF R.

I agree that it has been adopted under various modifications by the respective States; but I do not admit that it has been adopted by the Federal Constitution. Where the States have adopted it, it has been by a solemn and positive act, expressly recognising it as a part of their code of laws. I might challenge the gentleman to put his finger on any part of the Federal Constitution containing any recognition of it whatever, as a law of the United States. Is it to be found in the enumeration of the powers vested in the Legislature? Is it to be found in the enumeration of the powers vested in the Executive, or in the enumeration of the powers vested in the Judiciary? It is to be found in neither. Is this adoption of the common law to be found in any article contained in the original instrument, or in any of the amendments afterwards ingrafted upon it? In one of the amendments, we find the words *common law* used, but I presume it will not be contended that the common law was adopted by this article; for it must be obvious to the plainest legal understanding, that the words "suits at common law" are only used in contradistinction to suits in equity. In the latter cases, the trial by jury is not used, but in the former the trial by jury is preserved by this amendment. And when the rules of the common law are mentioned in the latter part of the same article, they are merely referred to as rules of proceeding which are to govern in motions for new trials, and a few other cases, where facts decided by the verdict of a jury may be re-examined; but it can have no operation to confer jurisdiction. Might I not be permitted to ask why the common law of England was adopted by our Constitution more than the laws of any other nation; more than the laws of France, Spain, Sweden or Holland? When the Constitution was formed we were more intimately connected with those countries than with England, because with some of them we had treaties of alliance, with all we had treaties of commerce. Besides, if the common law of England was adopted by the Constitution, a very serious question might arise whether the common law did not thereby become a part of the Constitution; and, if a part of the Constitution, all laws since passed by Congress contrary to the principles of the common law would be null and void; such, for instance, as the act declaring the punishment of manslaughter and several others. That this would be a fair construction may be gathered from the opinions of those who formed the constitutions of New York, New Jersey, Delaware, Maryland and South Carolina, and likewise from the Convention of Virginia; who all retained the common law, but expressly declared it to be subject to the future alterations of their respective Legislatures. Now, if the common law was adopted by the Constitution without any provision that it should be subject to future alteration by Congress, a question might certainly arise whether Congress would have the power of passing any law varying the common law. However, if this difficulty is got over, another not very inferior in importance immediately presents itself. If the Constitution adopted the common law, or the

common law attached itself to the Constitution, it immediately became a law of the United States, and is paramount to the laws and constitutions of the individual States. Wherever, therefore, the constitutions or laws of the States modified the common law, such modification was of no effect; for whenever a law of the United States clashes with the constitution or law of one of the States, the State Constitution or law must give way, as has been solemnly decided by the Federal courts in more instances than one; particularly in the case of Vanhorne's lessee against Dorrance, in the circuit court of Pennsylvania, and in the case of Ware and Hilton upon a writ of error in the Supreme Court of the United States. Whether the people of this country are inclined to submit to the train of evils which would follow the establishment of this principle, does not, I presume, admit of a doubt.

The gentleman from Delaware, however, seems to consider the existence of the common law, as a law of the United States, as a matter of necessity. He tells you if you go into your courts of justice with the mere statutes you cannot proceed a step, you cannot even punish a contempt. I shall here be allowed to ask if it is the idea of that gentleman that our Federal courts have an authority to enforce the common law doctrine of contempts? If by the operations of the common law they have a right to punish one contempt, I presume they have the same right to punish all. Let us then take a view of these common law contempts.

If one man strikes another in the superior courts in England, or even at the assizes, it is a contempt of a very high nature, and is punished at common law by cutting off the right hand, imprisonment for life, forfeiture of goods and chattels, and of the profits of land during life. To rescue a prisoner from any of the said courts is another very high contempt, and is punished by the common law with imprisonment for life, forfeiture of goods and chattels, and of the profits of land for life. There are a great variety of smaller offences likewise denominated contempts, for which the common law inflicts fine and imprisonment, and if the court pleases, corporal or other infamous punishment. This is a slight specimen of that common law, upon which the member from Delaware has pronounced so high an eulogium; and these are the punishments which your courts of justice could not inflict without the wholesome assistance of the common law. But sir, it may be shown that the courts of justice of the United States do not require the aid of the common law to enable them to punish contempts; for it is declared expressly by the seventeenth section of the act of September 1789, establishing the courts, that they shall "have power to punish by fine and imprisonment, all contempts of authority in any case or hearing before them." The gentleman therefore was grossly mistaken when he said it was necessary to call in the common law, to authorize the courts to punish for contempts; although the act of Congress does not go quite so far as the mild provisions of the common law, which cut off the right arm of the offender. By

this act it is likewise declared, that the Federal courts shall have power to grant new trials, and to administer all necessary oaths and affirmations. This was certainly quite nugatory, if the common law had attached itself to the Constitution; because these are powers which the State courts and those of England exercise by virtue of the common law; and if it had been the idea of those who have gone before us, that this common law was the law of the United States, they would not have vested in the courts the same authorities which they had by the common law. I believe, sir, I could take up our laws relative to the Judicial establishment, from the commencement of the Government to the present day, and could show that Congress had from time to time vested in the courts and judges a variety of powers, which they would have had, if the common law had been the law of the United States in their Federal capacity. But I will refer to one instance only, where it was thought necessary to pass a special law for the purpose of giving to your judges one of the lowest common law authorities. In the year 1798, an act, of one section only, passed, authorizing the judges of the Supreme Court, and of the several district courts, to hold to security of the peace and good behaviour in any case arising under the Constitution and laws of the United States. At common law the judges are by virtue of their commissions, *ex officio* conservators of the peace, and if this law had been the Federal law, there could have been no necessity for passing the act just alluded to.

Again, by the common law, a person charged with treason is allowed a peremptory challenge of thirty-five jurors; yet this right of challenge is likewise expressly given by the act of Congress passed in 1789. The same act provides for the punishment of murder, in places under the exclusive jurisdiction of the United States, as forts, arsenals, &c., and limits the number of challenges to twenty; yet these provisions are precisely the same as at common law, amended by a variety of statutes a long time before the emigration of our ancestors; and I presume it is not contended that the common law was brought here without the changes antecedently made. If, however, the common law was introduced originally by our forefathers, and afterwards attached itself to our Constitution by its own wonderful magic, I ask why not the statute law likewise? The same juridical principle will apply as well to the statute law as the common law, and the two together will furnish gentlemen with an extensive field to wander in, which I cheerfully abandon to them.

I think, sir, I have fully proved that the common law of England was not introduced by our ancestors at the time of their emigration, as a general and uniform law prevailing over all the extent of country comprised within the present limits of the United States; because the several colonies were planted at several periods, some of which were as remote from each other as one hundred and fifty years; because it was changed and modified at pleasure by the respective provinces, and because we were not at that time a na-

tion, and therefore required no general uniform law to govern us. I think I have proved that it was not adopted by the Declaration of Independence, because we associated only for mutual defence against a common enemy, and there were no general questions among us which could possibly require the interference of common law, and Congress had no power to establish courts to carry the law into execution. And I think I have proved that it was not adopted by the Constitution, because there is no part of the Constitution declaring it to be the law of the land; because its implied adoption, without limitation or restraint, would either make it a part of the Constitution itself, and thereby prevent a most valuable exercise of Legislative authority, or by making it a law of the United States, would give it a controlling and repealing or nullifying power over the laws and constitutions of the individual States; and because almost every Congress, by enacting a variety of provisions already established by the common law, expressed an opinion, most unequivocally, that the common law was not the law of the United States in their national capacity.

The common law can have no possible existence in this country, but as it has been introduced by the different States. Some have engrossed it into their body of laws by their constitutions; others by express statute, and in one or two instances perhaps, the States have used and practised it from their original colonization: for it is not denied that the several colonies brought with them such both of the statute and common laws as were applicable to their situation. But the common law as introduced, used, and practised in any one State, can only be considered as a State law. After it was retained by Maryland, by an express article of her constitution, it was no longer the common law of England as such, but thereby became the law of the State of Maryland, under the various modifications which had been made by the provincial assemblies; and such it remains at this day. As a State law then, it cannot be construed to give jurisdiction to the Federal courts, any more than the numerous acts of Assembly which have passed both before and since the Revolution. By the common law of England, as it exists there, and as it likewise exists in Maryland, kidnapping, or the forcible abduction or stealing of man, or woman, or child, is an offence punishable with fine, imprisonment, and pillory: a statute of Maryland declares the stealing of a slave to be a capital offence. Now neither of these laws can give the Federal courts any jurisdiction over these offences, because they are both State laws, although one of them is likewise a part of the common law of England.

Murder is an offence punishable, I believe, in all the States with death, and remains as at common law, modified by several old statutes, which our forefathers brought with them at the time of their emigration, yet the Federal courts can have no jurisdiction over the crime of murder, unless committed in a fort or arsenal; and this is expressly declared by act of Congress to be punishable with death if committed in those places. And permit

FEBRUARY, 1802.

Judiciary System.

H. OF R.

me once again to observe, that this shows that Congress at the time of passing the law (in 1789) entertained no idea that the Federal courts could punish murder by virtue of any other authority than that expressly derived from a statute.

"Cursing or wishing ill to the King," is an offence punishable at common law by fine, imprisonment, and pillory; but this is not the law of any of the States, because after the Declaration of Independence we had no King, and therefore it was not applicable to our situation. To curse or wish ill to the Governor of a State, could not be punished, although he is the Chief Magistrate of the State; because cursing or wishing ill to the King of England is a contempt against his person and Government: but in America we do not regard the majesty of persons, nor do we admit that the Government belongs to any one man, but to the whole people. However, even if this part of the common law did form any part of the codes of the respective States, it could give no jurisdiction to the Federal courts, being a State law. It is with much regret, Mr. Chairman, I have heard that a man in New Jersey was indicted at common law and punished by a Federal court, for expressing a ludicrous wish in relation to a former President of the United States—a personage not known to the common law. Yet common law jurisdiction was assumed by the Federal court over this offence, and the sacred person of the President was substituted for the sacred person of the King.

In fine, sir, my opinion is, and I sincerely believe it to be a correct and Constitutional opinion, that the common law of England, either as such or as it has been introduced into the several States, is not the common law of the United States in their national or federal capacity, and therefore cannot operate to give to the Federal courts any jurisdiction. On the present occasion, I wish to express my decided disapprobation of the doctrine contended for by the gentleman from Delaware, that the Federal judges have a discretionary power to introduce such parts of the common law as they please, and as they may think do or do not belong to us. This discretionary power in a judge is dangerous to liberty. It will sap the foundation of your Constitution itself. It will place the life and property of every man in the community in the most precarious situation. All security will be lost, all confidence will be destroyed. To vest a discretionary power of this kind in a judge, is to vest him with an arbitrary and unconstitutional power. That able and upright judge, the most excellent Lord Camden, who was an ornament not only to his profession, but to his country and to human nature, declares, that "the discretion of a judge is the law of tyrants; it is always unknown; it is casual, and depends upon constitution, temper, and habit. In the best it is often caprice; in the worst it is every vice, folly, and passion, to which human nature is liable."

I have dwelt longer on this subject, Mr. Chairman, than I intended; but as it is important, I trust I shall obtain the pardon of the Committee; thinking as I do, it was impossible for me to have

said less. Having several times heard the gentleman from Delaware maintain a similar doctrine on this floor, I have to-day thought it my duty to examine it; to state some reasons to show the doctrine to be incorrect, and others why it ought not to be admitted. How far I have succeeded the Committee will decide. Infinitely more might be said, but as the evening is advancing I will no longer trespass on your patience now. To-morrow I will again ask the indulgence of the Committee for the purpose of offering some remarks more immediately connected with the subject under consideration.

Mr. N. sat down; the Committee rose, and the House adjourned.

SATURDAY, February 27.

A representation of the inhabitants of Fairfield county, in the Northwestern Territory of the United States, was presented to the House and read, praying that the said Territory may be admitted as a State, into the Federal Union, on an equal footing with the original States.—Referred.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. NICHOLSON (in continuation) offered his acknowledgments to the Committee for consenting to hear him again to-day, after the very tedious, though he hoped not uninteresting discussion of yesterday, in relation to the common law. From the construction which had been given to our laws and Constitution, not only in the House, but as he had understood by some of the Federal Judiciary, he thought it the duty of every man to direct his attention to this subject, as it involved principles more important than were apparent at first view. Under this impression he had offered some observations to the Committee, which he flattered himself would not be totally unacceptable. In doing this he had been as brief as possible, for he well knew it would fill a volume, if all were collected which might be said in opposition to the opinion that the common law of England was the common law of America, as a nation. He would now, however, proceed to the discussion of the subject more immediately under consideration.

As I have already occupied more time than I either expected or wished, I have no doubt I shall be excused for passing over the immense folio of extraneous matter which the gentleman from Delaware has introduced. It will afford me an opportunity, at the same time, of passing by that list of names which the gentleman held up to our view, and which he exhibited in colors by no means flattering. Were I inclined to pursue the course which he has pointed out to me, I might present a catalogue of his political friends, covered with as miserable a daubing as his own; but I disdain it. Private feeling and private character

shall never be made the subject of my animadversions in this House.

The expediency of the present repeal is the first point to which gentlemen seem to have directed their attention. In order to show the necessity of the law of the last year, they have pointed out numerous defects, as they suppose, in the old system. The member from Delaware, after lavishing the highest encomiums on the gentleman who is said to be the author of that system, has undertaken to show that it was constructed upon fallacious principles. The fallacy of these principles, he says, was discovered in practice, and a new organization of the courts became necessary. Since I have been able to form an opinion of the relative merit of the political characters in this country, there are very few indeed whose talents I have heard more commended than those of the gentleman alluded to. On no occasion has his wisdom or the solidity of his judgment appeared more conspicuous to my mind than in the formation of the first Judiciary system of the United States. In a Government like ours, extending over a large tract of country, and composed of sovereign States, independent of each other, confederated for the purpose of mutual defence and mutual protection, it was rightly judged that its Judicial powers should not extend to any other cases of Judicial cognizance, than those which might be deemed somewhat of a general nature, and whose importance might affect the general character or general welfare of the Union. It was foreseen that these cases would not be very numerous, and experience has proved the correctness of this opinion; for in the twelve years that have elapsed, but about eight thousand four hundred suits have been brought in the Federal courts, exclusive of Admiralty causes; or about seven hundred suits for each year in the whole of the sixteen States. Of these, fifteen hundred now remain undecided, which are nearly equal to those of the two last years. In order to show the incompetency of the courts, as existing under the old establishment, gentlemen ought to prove that this is an unreasonable number to be at this time pending. I ask them if this does not prove as great a despatch of business as in any courts of the world? In the circuit court of Maryland, I believe the same rules have been adopted for the despatch of business as are practised in the General or Supreme Court of the State; and I believe it is likewise a rule, that causes shall continue the same length of time. By the laws of Maryland, a cause may continue two years in that court, and of course a cause may continue two years in the circuit court. What the rules may be in other courts respecting the continuance of causes, I do not know, but if a similar rule prevails in all the courts, no doubt can possibly exist that business has been as well despatched in the Federal circuit courts as it can ever be. Most of the causes brought in the Federal courts, I presume, are unimportant, and are controverted. Whenever there is a controversy it is almost impossible to get your pleadings in a state for trial in less than two years, where there are only two terms in each year; and this of necessity compels

a continuance for two years. My idea on this point is easily exemplified:

Suppose three hundred and fifty suits brought at May term, 1799	-	-	-	-	350
The same number at October term, 1799	-	-	-	-	350
The same number at May term, 1800	-	-	-	-	350
The same number at October term, 1800	-	-	-	-	350
The same number at May term, 1801	-	-	-	-	350
					<hr/>
					1,750

It would follow that seventeen hundred and fifty suits would be brought to those five terms, and the dockets of May, 1801, would exhibit seventeen hundred and fifty suits then depending. If the first three hundred and fifty were decided at that time, fourteen hundred would be left on the dockets in June, 1801, at which time the list now before us was taken. But the delays which are necessarily incident to trials at the bar, and in chancery, would furnish at least a possible presumption that the whole brought at the first term could not readily be tried at the fifth, for want of testimony, the defective state of the pleadings, demurrers, motions for new trials, and sundry other causes. Let me then again repeat, that as fifteen hundred suits only remain pending, business must appear to have been well despatched, and no argument can be drawn from the supposed incompetency of the courts.

But, sir, the first objection which gentlemen have started to the old system, arises from the itinerancy of the judges. They are stated to be old men, who have passed the meridian of life, and it cannot be expected that they should ride through the continent for the purpose of holding courts. They number, says the member from Delaware, the *viginti annorum lucubrationes*, and must now have leisure to read, to repair the ravages of time, or, in other words, to prevent them from forgetting what they had before learned. I trust, Mr. Chairman, that I feel as much reverence for old age as most men, and I flatter myself I am not totally unacquainted with the requisite qualifications of a judge: but indeed gentlemen must excuse me, if I do not consent to pay a man four thousand five hundred dollars a year "to prevent him from forgetting what he had before learned."

Give me leave, however, to ask, if these are the evils which have been discovered by practice? This old system has been called an experiment. Permit me to ask, if these are the evils which experience alone has brought to view?

When the great man, alluded to by the gentleman from Delaware, framed this system; when he defended it in the Senate of the United States, as I am told he did, with all the energies of his mind, against the objections which were then urged to it, was it not in his power to calculate the labor of travelling over a certain extent of country? Or, if this was an exaction too great for his powers, were there no men in Congress with sagacity enough to discover this mighty objection? Was it one of the *arcana* left for the laborious researches of the present day? The extent of country has not since increased. Bridges are not kept

FEBRUARY, 1802.

Judiciary System.

H. OF R.

in worse order, nor do rivers rise higher now than they did at that time. In truth, all the means of travelling are more eligible and commodious. The roads are better, the houses of entertainment more numerous, the number of stages greatly increased, and gentlemen are not now under the necessity of using their own carriages. Yet, notwithstanding these difficulties which then presented themselves, but have since been removed, men of the most eminent talents were readily found, who were willing to accept the places of judges, and were not afraid of meeting the inconveniences which are now complained of. It cannot, therefore, be urged with propriety that the itinerancy of the judges is one of the objections which has been proved by a trial of the experiment. But it is said to be too laborious, too fatiguing for a judge to be compelled to ride from New Hampshire to Georgia, for the purpose of holding a court. Sir, when these courts were first organized, the United States were divided into three circuits; the Eastern, the Middle, and the Southern. Six judges were appointed, two of whom were to ride in each circuit for the purposes of holding a court in conjunction with the district judge. Of this, however, the judges complained; and, for their relief, a law passed requiring *one* supreme judge only to associate himself with the district judge. This was, in fact, dividing the United States into six circuits, for no one judge was compelled to ride beyond the two States immediately adjoining that in which he lived. It is true, that no judge was obliged to go twice into the same State, until every one of his brethren had taken his turn in it; but this was optional with them; and if, through caprice, or a desire of change, or any other cause, they could not agree among themselves, I cannot think that it ought to be considered a sufficient reason to reorganize the whole system. By the act of 1792, they were authorized to assign to each other the several circuits in which they were respectively to ride; and if they have made inconvenient arrangements, it can only be imputed to themselves; they are at liberty to change them whenever they think proper. Why, then, is it alleged, that a judge was obliged to ride from New Hampshire to Georgia, when a gentleman living in the New England States was never compelled, by law, to come into any district farther South than Connecticut? But no arrangement of this kind was made. A judge residing in the Eastern States, for the sake of pleasure, to see the country, or for some other cause, we find travelling with "all the agility of a post-boy," from New Hampshire to Georgia, for the purpose of holding a court; while another, residing in the Southern country, with the sprightliness and activity of youth, "studying the law upon the road," has flown from Georgia to New Hampshire, and held his court there. I again ask, where was the necessity of this? If they impose upon themselves labor four or five times greater than that which the law requires them to perform, is it right to, call this excess an evil, and impute that evil to the law?

If the bill now upon the table should pass, let the

judges of the Supreme Court make such amendments as will be agreeable to themselves. Let the judge residing in Massachusetts confine himself to the New England States; let the judge in North Carolina travel Southward; and let the other judges perform their duties in the Middle States. They will not then suffer the inconvenience complained of. The mountains which have been raised by the gentleman from Delaware, will fall before them. The wilderness which has sprung up in his imagination, will be turned into fruitful plains and pleasant villages. The judges will have leisure to read to prevent them from forgetting what they had before learned, and will be enabled to add to the *viginti annorum lucubrationes*.

But gentlemen have resorted to another part of the Constitution, which they say contains the restrictions; not indeed in express terms, but by implication. Sir, this doctrine of implication is a dangerous one. A departure from the letter in order to pursue the spirit, may lead to incalculable mischief, and must ultimately destroy the Constitution itself. It leaves it to the discretion of every succeeding Congress to give to the Constitution any meaning whatsoever, that their whim or caprice may suggest; to assume to themselves, and to attach to the other branches powers never intended to be delegated. We say that we have the same right to repeal the law establishing inferior courts, that we have to repeal the law establishing post offices and post roads, laying taxes, or raising armies. This right would not be denied but for the construction given to that part of the Constitution which declares that "the judges both of the supreme and inferior courts shall hold their offices during good behaviour." The arguments of gentlemen, generally, have been directed against a position that we never meant to contend for: against the right to remove the judges in any other manner than by impeachment. This right we have never insisted on; we have never in the most distant manner contended that the Constitution vested us with the same power that the Parliament of England have, or that is given to the Legislatures of Pennsylvania, Delaware, New Jersey, and some others. Our doctrine is, that every Congress has a right to repeal any law passed by its predecessors, except in cases where the Constitution imposes a prohibition. We have been told that we cannot repeal a law fixing the President's salary, during the period for which he was elected. This is admitted, because it is so expressly declared in the Constitution; nor is the necessity so imperious, because, at the expiration of every four years, it is in the power of Congress to regulate it anew, as their judgments may dictate. Neither can we diminish the salary of a judge so long as he continues in office, because in this particular the Constitution is express likewise; but we do contend that we have an absolute, uncontrolled right to abolish all offices, which have been created by Congress, when in our judgment those offices are unnecessary, and are productive of a useless expense.

Let us examine the objections which have been

raised to this upon that part of the Constitution in which it is said that "the judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall receive, at stated times, a compensation for their services, which shall not be diminished during their continuance in office." It has already been stated by some of my friends, and I shall not therefore dwell upon it, that the prohibition contained in these words was of two kinds: the one applying to the Legislature, and prohibiting a diminution of salary; the other applying to the Executive, and forbidding a removal from office. The first prohibition our adversaries readily admit, but the second, they say, applies as well to the Legislature as to the Executive. I should agree to this, too, were there any necessity for it, but it is not pretended by us that we have the right to remove from office any officer whatsoever—not only a judge, but even a revenue officer; there would, therefore, be no necessity for imposing a restriction upon Congress in relation to a judge any more than in relation to an officer concerned in the collection of the revenue. They are each appointed by the President and Senate, but the Executive officer holds his place at the will of the President, the judge holds his office during good behaviour, and neither subject to removal by the Legislature. The term good behaviour is said to secure to the judge an estate for life in his office, determinable only upon impeachment for, and conviction of bribery, corruption, and other high crimes and misdemeanors, and that inasmuch as his good conduct is the tenure by which he holds his office, he cannot be deprived of it so long as he demeans himself well. As our system of jurisprudence has been borrowed from Great Britain, it may not be amiss to refer to the history of that nation, in order to discover whether they have given the same construction to these words as is now contended for by gentlemen on the other side of the House. It is certain that, in England, it has, in some cases, been considered, that the words good behaviour, in a commission, confer the office for the life of the officer, provided he shall so long demean himself well; but I do not know that a question has ever arisen there, how far the power creating the office could afterwards abolish it. It appears to me to follow so necessarily, that for myself I should never have started a doubt; it is however most clear, that these words have not, even in England, been thought to give the judges an estate for life in their offices. Antecedent to the accession of William the Third, all judges were appointed by, and held their commissions during the pleasure of the King; but, in the reign of that monarch, it was declared by the Act of Settlement, that judges after that time should hold their commissions during good behaviour, removable upon the address of both Houses of Parliament. The tenure of office then became precisely similar to that of our judges at this time, with the single exception, that it was in the power of Parliament to remove them; they were to hold their offices so long as they demeaned themselves well, and could secure the good will of the Legislature. Yet this

was not considered there as an estate for life, because it is well known that their appointments became vacant upon the demise of the Crown, and their commissions were no longer in force. It was the settled opinion and uniform practice for sixty years. The judges never ventured to maintain a contrary doctrine, but acquiesced in it from the reign of William the Third to that of George the Third. It was not only the practice, but it was recognised by the acts of several succeeding Parliaments; for, in the first year of the reign of Queen Anne, an act of Parliament passed, declaring that the judges should hold their commissions six months after the demise of the Crown. Here it was decidedly the opinion of Parliament, that the judge did not hold his office during life, because it was admitted that the commission was properly annulled by the demise of the Crown, and they declared that, in future, it should continue in force for six months after. This practice of vacating the commissions of the judges, six months after the demise of the Crown, was regularly pursued upon the death of Queen Anne, of George the First, and George the Second, without any doubt being entertained as to its propriety. In the reign of George the Third, Parliament again acknowledged it to have been the settled and established law of the realm, by enacting a particular statute to change it, in which they declared, that the commissions of the judges should not determine upon the demise of the Crown, and so the law stands at this day. I have given this as an example to show that, in England, the words good behaviour did not invest the judges with an estate for life in their offices; but that, notwithstanding these words in their commissions, in conformity to an act of Parliament, they were still left subject to the established principle of the common law, that the commissions of all offices in the appointment of the Crown were vacated by the death of the reigning monarch. It is a maxim universally admitted, that the common law may be repealed by statute, but it was not considered in England that a fundamental principle could be repealed in an incidental manner, by declaring that the commissions of the judges should continue during good behaviour. It is a fundamental principle in every Government, that the power having the right to enact has likewise the right to repeal a law. It is the existence of this fundamental principle in our Government which gives to Congress the right of repealing their own laws; for the power to repeal is no where expressly vested in them by the Constitution, and it would be absurd to suppose, that when a law is once enacted, it is to continue forever in force. The Act of Settlement is as much a part of the Constitution of England as the third article is a part of our Constitution; yet the provision in this act which declares that the judges shall hold their commissions during good behaviour, was never considered as destroying that fundamental principle of their Government by which all commissions were vacated upon the demise of the Crown. So in our own country, although the third article of the Constitution declares, that the judges of

FEBRUARY, 1802.

Judiciary System.

H. OF R.

the inferior courts shall hold their commissions during good behaviour, yet it cannot operate to destroy the fundamental principle of our Government, by which Congress is authorized to repeal all laws which they have enacted, and to abolish all offices they have created. An express statutory provision was deemed necessary in England to prevent the commissions of the judges from being vacated by the demise of the Crown, and was accordingly made in the reign of George III. An express Constitutional provision must be made before Congress can be divested of the right of repealing a law which they have enacted. Until our Constitution is amended to this effect, which I hope never to see done, the right to repeal a law constituting an inferior court, can no more be denied than the right to repeal a law establishing a post road, laying a tax, or raising an army.

Having shown that, in England, the tenure by which the judge held his office was not, of itself, deemed sufficient to destroy a great and leading principle of their Government, I will now endeavor to prove that the tenure of office cannot and ought not to produce this effect in the United States. I will not dispute with the gentleman from Connecticut (Mr. GRISWOLD) about the meaning of the word *hold*, because it equally answers my purpose to say, that the judge shall *possess* his office during good behaviour. I cannot, however, agree with him, that the judge holds his office of the people, for he is not appointed by them; besides, if he is to hold his office during good behaviour, of the people, a doubt perhaps might arise, whether, under these circumstances, even a change of the Constitution could affect him. It is true he is not called the President's judge; neither is a Minister to a foreign Court called the President's Ambassador, but the Ambassador of the United States; yet it will not be contended, that the Ambassador holds his place of the people.

It is necessary to examine whether the tenure by which any officer of the United States holds, or, if gentlemen please, possesses, his office, can destroy the inherent right of Congress to repeal the law by which the office is created. In order to do this, it may be proper to refer to an early period of the political history of the present Government. In the year 1789, soon after the Government was organized, when Congress were about to establish the office of Secretary of Foreign Affairs, since called Secretary of State, a question arose, whether the officer was to be removed at pleasure by the President; whether by the President and Senate who appointed him, or whether he was to hold his place during good behaviour.

These different constructions of the Constitution were contended for by three different classes of gentlemen, who severally urged, that each was the true meaning of the Constitution. A gentleman of distinguished talents, at that time representing South Carolina, (Mr. WILLIAM SMITH,) advocated with very great ability the opinion, that the Constitution had pointed out but one method

of removing an officer, (by impeachment,) and therefore that he could not be removed so long as he demeaned himself well. Finally, however, a majority agreed, that the true meaning of the Constitution was, that the power of removal was of an Executive nature, and therefore belonged solely to the President. This construction was adopted, and has ever since been sanctioned by uniform practice. But I will suppose that Mr. SMITH's construction had been agreed to, and it must be allowed to be extremely plausible, would Congress thereby have been prevented from repealing a law by which an Executive officer had been created, because the officer could only be removed by impeachment? I presume no gentleman will say so. But let us take the case as it now stands. Your supervisors, who superintend the collection of your excise duties, are appointed by the President and Senate, and hold their offices under the Constitution, not during good behaviour, but during the will and pleasure of the President. The tenure by which he holds his office is completely beyond the power of the Legislature, and they cannot remove him. So long as he can secure the good will of the President, he is to hold his office against the whole world. It is as sacred, in relation to the authority of Congress, as that of a judge. They both hold their offices independent of the Legislature; the one during good behaviour, the other during the pleasure of the President. It is not in our power to remove an excise officer, so long as his office continues, any more than to remove a judge, so long as his office continues. The authority vested in us is entirely Legislative, and has nothing to do with the Executive power of removal. Yet is there any man on earth can say that we have not a Constitutional right to repeal the laws laying excise duties, by which the office of supervisor is created? And can any one say that we can remove the supervisor in any other manner than by repealing the law? We do not contend for the right to remove the judge any more than for the right to remove the supervisor, neither of which we can do, each holding his office independent of us; but we allege that the tenure by which either holds his office cannot prohibit us from repealing a law by which the office is created. It is the tenure of office which is now urged against the repealing power of Congress. This tenure is completely independent of Legislative will, and therefore we are told we cannot pass a law to affect it. I have, however, shown that the tenure by which the supervisor holds his office is as completely independent of Legislative will, as that by which a judge holds his office; yet no man will be hardy enough to dispute the Constitutional right of Congress to repeal the excise laws, and thereby to dismiss all the persons holding offices under them. I am aware that I may be told that the President, in giving his sanction to the law, at the same time impliedly signifies his consent to the removal of the officer. But permit me to suppose that the President refuses his signature to the law, and tells you that these officers hold their commissions independent of you, and there-

fore you have no right to dismiss them; that the Constitution authorizes them to hold their places during his will and pleasure, and that it is his will and pleasure they shall continue in office. Here the tenure is as strong and inviolable by the Legislative power as the tenure of the judge; yet Congress may, notwithstanding, afterwards pass the law by the concurrence of two-thirds, and destroy this sacred tenure of office.

If, then, the tenure of office in the one case cannot destroy the right to repeal, why shall it destroy it in the other? Both tenures are equally independent of Legislative control—the one securing an estate defeasible by misbehaviour, the other securing an estate defeasible by the will of the President; but neither dependent on Congress for continuance in office, so long as the office itself exists. Gentlemen say we cannot do that by indirect means which we cannot do directly; that is, that we cannot remove a judge by repealing this law, inasmuch as we cannot remove him by direct means; but I have proved beyond the possibility of doubt that we may indirectly remove an excise officer by repealing the law under which he was appointed, although we have no authority to remove him in any direct manner. If the principle laid down by gentlemen is not true in the one case, it cannot be true in the other.

For my own part, Mr. Chairman, I think no doubt can be entertained that the power of repealing, as well as of enacting laws, is inherent in every Legislature. The Legislative authority would be incomplete without it. If you deny the existence of this power, you suppose a perfection in man which he can never attain. You shut the door against a retraction of error by refusing him the benefit of reflection and experience. You deny to the great body of the people all the essential advantages for which they entered into society. This House is composed of members coming from every quarter of the Union, supposed to bring with them the feelings and to be acquainted with the interests of their constituents. If the feelings and the interests of the nation require that new laws should be enacted, that existing laws should be modified, or that useless and unnecessary laws should be repealed, they have reserved this power to themselves by declaring that it should be exercised by persons freely chosen for a limited period to represent them in the National Legislature. On what ground is it denied to them in the present instance? By what authority are the judges to be raised above the law and above the Constitution? Where is the charter which places the sovereignty of this country in their hands? Give them the powers and the independence now contended for, and they will require nothing more; for your Government becomes a despotism, and they become your rulers. They are to decide upon the lives, the liberties, and the property of your citizens; they have an absolute veto upon your laws, by declaring them null and void at pleasure; they are to introduce at will the laws of a foreign country, differing essentially with us upon the great principles of government; and after being clothed with this

arbitrary power, they are beyond the control of the nation, as they are not to be affected by any laws which the people by their representatives can pass. If all this be true; if this doctrine be established in the extent which is now contended for, the Constitution is not worth the time we are spending upon it. It is, as it has been called by its enemies, mere parchment. For these judges, thus rendered omnipotent, may overleap the Constitution and trample on your laws; they may laugh the Legislature to scorn, and set the nation at defiance.

To me it is a matter of indifference by what name you call them; I care not whether it be kings or judges. Arm them with power, and the danger is the same. For myself I have no hesitation in declaring that I would rather be subject to the absolute sway of one tyrant, than to that of thirty; as I would prefer the mild despotism of China to the hated aristocracy of Venice, where the vilest wretch was encouraged as a secret informer, and the lion's mouth was ever gaping for accusation.

I must now be permitted to turn my attention to various authorities which gentlemen have introduced, and which, I presume, they thought would fully establish the position they have taken. I deem it peculiarly fortunate for us, sir, that, although volumes have been ransacked, though heaps of newspapers and pamphlets have been resorted to, and the journal of the Convention itself has been produced as authority, yet the whole furnish not a single argument—not one solitary idea—to prove the unconstitutionality of the measure now under consideration. They have been read, it is true, with much apparent triumph, and have afforded gentlemen an ample opportunity to display their eloquence and ingenuity, but certainly have no bearing on the question.

The first of these authorities is of very high nature, not only because it is the decision of a court of judicature, but because that decision was made by men whose talents are acknowledged, and whose characters command universal respect. Let the case, however, be fairly stated, and it will be found to bear no analogy to the subject now before us. I shall refer to the same pamphlet which has been quoted on the other side of the House, and therefore there can be no difference between us as to facts. We find in page twenty-fourth, that by the Constitution of Virginia, the two Houses of Assembly were to appoint, by joint ballot, judges of the supreme court of appeals and general court; judges in chancery, and judges of admiralty, who were to be commissioned by the Governor, and to continue in office during good behaviour. In the twenty-fifth page it is said that, by the first judicial system of Virginia, one general court was constituted with common law jurisdiction; one court of chancery, and one court of admiralty; and by the law the judges of these three courts were declared to constitute the court of appeals, but as such had no commissions given to them. In 1787, the Legislature passed a law erecting a system of circuit courts, and declared that the above named judges should execute the

FEBRUARY, 1802.

Judiciary System.

H. OF R.

duties of circuit judges, in addition to their duties as judges of the other courts. This law the judges refused to execute as unconstitutional, because they said the Legislature had no right to impose new duties on them without giving them additional salary.

This is a plain and simple statement of the case, with the decision of the court, and I am astonished that any man should attempt to apply it to that now under consideration. We do not propose to add new duties to those now performed by the circuit judges; but we propose to take from them all duties whatsoever, so that the two cases are not at all analogous. If, indeed, the opinion be a sound one, (and I certainly shall not undertake to question it,) it clearly proves that the law of last session was unconstitutional, because that law imposed new and more arduous duties on the judges of the district courts of Tennessee, Kentucky, and Maryland. It might likewise prove the bankrupt law to be unconstitutional, because it imposed a great variety of additional duties on the district judges throughout the United States. The bill now under consideration does not add new duties to those of the judges of the Supreme Court and the judges of the district courts, but replaces both in the situation in which they were prior to the passage of the law which we are now about to repeal. I must say, therefore, that this authority fails altogether.

Another decision of the same judges has likewise been adduced to prove the unconstitutionality of the present bill, which is equally inapplicable with the other; but perhaps it may be found in the end to apply more forcibly to the Judiciary system of last session. The same author from whom our opponents have derived their information, tells us (in page 30) that after the judges had refused to do the duties of circuit judges as just mentioned, "the Legislature, apparently acquiescing in their decision," new modelled the law, and established a separate court of appeals, the judges of which were to be elected by the joint ballot of the two branches, agreeably to the Constitution. The former judges, who had before jointly performed the duty of judges of the court of appeals under a law of the State, were relieved from the further discharge of it, and six of them were elected judges of the new court of appeals now created separately, others being appointed in their places as judges of the court of chancery, general court, and court of admiralty. This law they likewise declared to be unconstitutional, not because a court which had been created by law was abolished, (for the court of appeals was expressly established by the Constitution,) but because, in their own language, it was "an amotion from office of the whole bench of judges of appeals, and the appointment of new judges to the same court."

Now, sir, I aver that the very proceeding which the judges of Virginia declared to be unconstitutional was the effect of the Judiciary bill which it is now proposed to repeal. For, by the former system, the judges of the Supreme and district courts of the United States were made judges of the circuit courts, and continued to hold them

until they were "amoved from the office" of judges of the circuit courts by the law of last session. So that this decision cannot apply to the bill now on the table, but is directed with great force to that passed by our adversaries early last year, and which it is our intention to repeal.

I have been thus concise in the examination of these two opinions, because it was only necessary to show the points in dispute, to convince the most prejudiced mind that they could have no bearing on the present question. They may, indeed, serve to show that the judges thought themselves authorized to declare an act of the Legislature unconstitutional; but this is by no means the question before us, although it has been dragged into the discussion.

While I am on this part of the subject, I will endeavor to prove that the last Congress set us an example of abolishing courts and vacating the places of judges, although gentlemen who were then in the majority now contend that a similar proceeding on our part will be unconstitutional. The twenty-fourth section of the Judiciary act of last session declares "that the district courts of the United States in and for the districts of Tennessee and Kentucky shall be, and they hereby are, abolished;" and by the same section it was provided that the jurisdiction of those courts should be afterwards vested in, and exercised by, the circuit courts of Tennessee and Kentucky respectively. The question necessarily arising is, what was the effect of abolishing these courts? I have no hesitation in saying that, in my opinion, the offices of the judges were likewise abolished. It is true, that by the seventh section it is declared that the circuit court of the sixth circuit shall be composed of a circuit judge, and of the judges of the district courts of Tennessee and Kentucky, thereby retaining them in office, and, as gentlemen say, not affecting their independence. This point I shall remark on presently, but will now confine my observations to that part of the law which abolishes the district courts.

The words *judge* and *court* are correlative terms, and by the Constitution are inseparably connected with each other; for in no part of the Constitution do we find any other judges spoken of than judges of the Supreme and inferior courts. A court may be composed of one or more judges; as the district court is composed of one, and the Supreme Court of six judges. It is the legal name of one man, or of a body of men in their collective capacity, vested with certain powers, authority, and jurisdiction, to be exercised by them agreeably to the established laws of the country; as the word *Congress* was, under the Confederacy, the political name of a body of men in their collective powers of a certain extent. When you abolish the court, you take from the persons composing the court all the powers vested in them as a court; as when the old Congress was abolished, they were divested of all powers vested in them as a Congress. When the district court of Kentucky was abolished, the gentleman who was then judge, was no longer judge of the district court, for there was no such court in existence. I would

ask, then, of what he was the judge? For the idea of a judge without a court is an absurdity. I trust I shall not be told that he was judge of the district of Kentucky, for the Constitution knows of no judge either of the Supreme or of an inferior court; and the judge of a district, without a court, is no where recognised by the Constitution. I think, therefore, I am warranted in saying that when the district courts of Tennessee and Kentucky were abolished, the offices of judges of these courts were likewise abolished. This is precisely the effect now contemplated. The bill upon the table, if enacted into a law, will abolish the circuit courts which were created last year, and will at the same time abolish the offices of the judges of these courts.

But we are told that, by abolishing the district courts of Tennessee and Kentucky, the independence of the judges of these courts was not affected, because they were by the same law appointed to hold the circuit court of the sixth circuit. This is the part of the law which the gentleman from Virginia said had violated the Constitution, and this opinion I do, without hesitation, concur in. By the twenty-seventh section of the act passed last session, the circuit courts then in existence were entirely abolished, and by the seventh section, new circuit courts were created. The Constitution has given to the President and Senate the power of appointing all judges both of the Supreme and inferior courts; the circuit court of the sixth circuit is an inferior court, and by the Constitution the judges ought to have been appointed by the President and Senate. Yet in the face and in violation of the Constitution, the Legislature of the last session did appoint the judges of the district courts of Tennessee and Kentucky to hold the courts of the sixth circuit, which courts were created anew by that law, and ought to have had their judges appointed by the President and Senate. This, sir, was the measure which the gentleman from Virginia said had inflicted a ghastly wound on the Constitution, and not that part of the law, as has been contended, by which the two district courts were abolished.

The gentleman from Connecticut, (Mr. GRISWOLD,) in order to show that we are not authorized to abolish these courts, and thereby to vacate the commissions of the judges, has referred us to the draught of a constitution made for the State of Virginia, in the year 1783, by the present President of the United States. It must be remembered, sir, that this is nothing more than the opinion of an individual on a subject not growing out of the Constitution of the United States, which was not then formed, and, I believe, not even dreamt of; but, as I feel a high respect for the opinions of this gentleman on all subjects, I shall beg leave to examine that alluded to by the member from Connecticut. And, to me, it is a matter of some gratification that the man who has been so long and so unjustly the object of federal calumny, should at last receive even this slight retribution from federal authority. In this reference, however, the honorable member has been peculiarly unfortunate, for it will be found that this draught of a

constitution shows the opinion of Mr. Jefferson to have been, at that day, precisely the opinion which we now entertain on the subject before us. Happily for the nation, it is not the only instance in which the sentiments of the Chief Magistrate are in direct opposition to those of the gentleman from Connecticut, and his friends. If the gentleman had turned to the book itself, which I now have in my hand, instead of relying on the scraps of anonymous scribblers, who, for aught I know, are interested in giving a false coloring, he would not have been imposed on. In the third article of the plan of a constitution proposed by Mr. Jefferson, it is declared that "the Judiciary powers shall be exercised by the county courts, and such other inferior courts as the Legislature shall think proper to continue or erect; by three superior courts, to wit: a court of admiralty, a general court of common law, and a high court of chancery; and by one supreme court of appeals." This language is very similar to that of our Constitution, which says that "the Judiciary power shall be vested in one Supreme Court, and such inferior courts as Congress may, from time to time, ordain and establish." Now, sir, the precise point of difference between us is, whether it was at that time the idea of the President, that the judges of these inferior courts who, I will show you, were likewise to hold their commissions during good behaviour, could be removed from office, by abolishing their respective courts. The plan already alluded to, proceeds to declare that the judges of the court of chancery, of the general court, and court of admiralty, shall hold their commissions during good behaviour; and afterwards, in page 371, provides that "the justices or judges of the inferior courts, already erected or hereafter to be erected, shall be appointed by the Governor, on advice of the Council of State, and shall hold their offices during good behaviour, or the existence of their court." This, then, clearly shows it to have been the idea of the writer, that the inferior courts, which the Legislature were authorized to erect, as they might think proper, might afterwards be reduced by the Legislature, and the judges displaced, although they were to hold their commissions during good behaviour. As I before said, this is nothing more than an opinion on a subject somewhat similar to that before us, and is not directly in point; but as the member from Connecticut thought proper to call it into his aid, I think, when it is found to be against him, it may very fairly be thrown into the opposite scale.

The gentleman has likewise referred to the journals of the Convention by whom the Constitution was framed, and has said a proposition was there made, that the judges should be removed upon the address of the Legislature, as in England. As this was not inserted in the Constitution, he infers that we have not the power. Is it necessary, sir, again to repeat, that this is a power which we do not contend for? But does it therefore follow that we have not the power to repeal a law? There has been no proposition that we should exercise such a power. We have no complaints

FEBRUARY, 1802.

Judiciary System.

H. OF R.

against the judges. They may all be, as I know some of them are, men of honor and integrity. We have no desire to remove them and put others in their places, but we wish to abolish a system which, in our consciences, we believe to be useless and unnecessary, and which is supported at a heavy expense, that the nation is neither able nor willing to pay.

But, sir, I believe it has not heretofore been supposed, that a refusal by the Convention to grant a power expressly, prevented Congress from an exercise of that power. When it was formerly proposed to grant a charter of incorporation to the Bank of the United States, it was stated by a member of this House, who had likewise been a member of the Convention, (Mr. MADISON,) that an attempt had been made in the Convention to invest Congress with this power, and that the proposition was rejected; yet, this argument had no effect whatever, for Congress did proceed to incorporate the Bank, and the incorporation stands at this day. If, therefore, the present quotation from the journal was in point, we might be excused for suffering it to have no weight with us, as we should at least be justified by the precedent of federal authority. But it bears no analogy to the present question, and ought to have no influence in its decision.

The extracts which have been read from Judge Tucker's lecture, from the debates of the Virginia convention, and from the writings of "Publius," are equally irrelevant. They contain some general ideas on the independence of the Judiciary, without any definition of that independence which can possibly affect the bill on the table. The independence of the three branches of Government has, in my opinion, been much talked of without being fairly defined, or correctly understood. The powers of our Government are distributed under three different heads, and are committed to the different departments. The Legislative power extends to the enacting, revising, amending, or repealing all laws, as the various interests of the nation may require. The Judiciary power consists in an authority to apply those laws to the various controversies which may arise between man and man, or between the Government and its citizens, and to pronounce sentence agreeably to the dictates of their judgment and consciences. After the Judicial decree, it then becomes the business of the Executive to carry it into effect according to its true intent, and conformably to the laws of the land. In all Governments where they have the semblance of freedom, the great *desideratum* has been, to keep these three branches so entirely separate and distinct as that the powers of neither should be exercised by the other; or, in other words, that the Legislative powers should never be exercised by the Executive or Judiciary, that the Judicial powers should not be exercised by the Legislative or Executive, and that the Executive powers should not be exercised by the Legislature or Judiciary. But there is no Government on the face of the earth, whose history I am acquainted with, in which a total and entire independence has been established. In England the judiciary

hold their offices at the will of Parliament. In the States of Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, and Georgia, the judges are either elected by the Legislature for a limited time, or are subject to removal by them; in New York, some of the judges are in the same situation; in New Hampshire, the Legislature are authorized to limit the duration of their commissions, and, I believe, are in the habit of doing so; and in Maryland, Virginia, North Carolina, South Carolina, and Georgia, the Executive is absolutely dependent on the Legislature for his continuance in office, being annually or biennially elected. In Tennessee, and in most, perhaps all of the others, both the Judiciary and the Executive are dependent on the Legislature for the amount and payment of their salaries. Yet, sir, in all these States, where we find no such idea of independence as is now contended for, there has been no confusion, no disorder. The people are happy and contented, and I venture to affirm, are more free than the inhabitants of any other part of the globe. They are happy, because none can oppress them; they are free, because they have a control over their public agents. But if the public agents of the Federal Government are to be set above the nation, and are to be invested with the arbitrary and uncontrolled powers which some gentlemen insist on, who can say where they will stop, or what bounds shall be prescribed to them? Man is fond of power, is continually grasping after it, and is never satisfied. He is not, therefore, to be trusted. Unlimited confidence is the bane of a free Government. Those who would retain their freedom, must likewise retain power over agents, or they will be driven to destruction. I have been taught to believe, that the power is never so safe as in the hands of those for whose benefit it is to be employed. I consider it in their hands when it is delegated to representatives freely chosen by themselves for a short period, and immediately responsible to them for its use. "Power in the people has been well compared to light in the sun; native, original, inherent, and not to be controlled by human means." But power, when once surrendered to independent rulers, instantly becomes a despot, and arms itself with whips and chains. While the people retain it in their own hands, it exalts the character of a nation, and is at once their pride and their security; if they surrender it to others, it becomes restless and active, until it debases the human character, and enslaves the human mind; it is never satisfied until it finally tramples upon all human rights. It is against this surrender of power that I contend; it is this vital principle of the Constitution that I never will yield. The people are the fountain of all power; they are the source from which every branch of this Government springs, and never shall any act of mine place one branch beyond their control.

But, Mr. Chairman, I will conclude. I have already said more than I could have wished, but the subject demanded it. The question has become important, and the Constitution loudly calls

for its decision. I entreat gentlemen, however, to examine calmly this new doctrine of the independence of judges, before they establish the principle that the tenure of office is to prevent the repeal of a law, by which the office is created. It will equally apply to every office under the Government for all are held equally independent of the Legislative will. It is no more in our power to remove an executive than a judicial officer, and if we are to be prevented from repealing a law, because we have no right to remove an officer, not only the present expensive Judiciary must continue, but the army and the navy may be increased hereafter, and no future Congress will be authorized to reduce them; and the odious excise duties are entailed upon us for ever. This is an extent, I presume, to which no gentleman is willing to go. It may indeed secure the judges in their offices, and afford them the much wished for independence, but it will sacrifice the independence of the nation, and render the Constitution of no avail. It may leave us the name and the shadow of liberty, but the essence and the spirit of representative government will be totally destroyed.

I therefore cherish the hope, that this Constitutional question will be decided by passing the bill upon the table, and that a majority of this House will vote against striking out the first section.

Mr. DENNIS.—Mr. Chairman, indisposed as I have been, since the first commencement of this discussion, and indisposed as I still am, prudence, perhaps, would have dictated to me silence on this occasion; and sure I am, I should not have risen at this late hour of the day, but for the observations of my honorable colleague (Mr. Nicholson.) Had I offered my sentiments at an earlier period of this discussion, it would have been my primary object to have taken an analytical view of the Constitutional question, to have shown what the Constitution has said, and to have proven that it means what its language certainly imports, no less a restriction on Legislative, than on Executive power. But this will now be but a subordinate consideration, and my object will be rather to pursue certain gentlemen through their boundless excursions into almost every region of our political history, than to attempt a methodical investigation of the subject before us. In the course of my observations, I beg my colleague to be assured, I shall not omit to pay him the homage of my most profound respect and high consideration; yet he must excuse me, since he has thought proper to reiterate the preliminary remarks of his friend from Virginia (Mr. GILES,) if I should assign to that gentleman the priority in the application of my remarks. And here, Mr. Chairman, I will not promise, like little David (Mr. RANDOLPH) to slay the Philistine, (Mr. GILES,) but will endeavor to aid my friends in repelling his unprovoked and ungodly attacks on the children of Israel and their illustrious chieftain; that chieftain who may be emphatically denominated the father of his country, and who was the President of the Convention who formed that sacred instrument of which you are about to make a burnt offering; a propitiatory sacrifice to appease the vengeance of

party prejudice and political hostility, to a few obnoxious individuals. Great geniuses, Mr. Chairman, in the political, may be aptly assimilated to comets, in the natural world; they serve rather to excite our admiration and wonder and astonishment, than contribute to the order or perfection of the general system. Such a genius is the gentleman from Virginia (Mr. GILES.) That gentleman we all know has light in abundance, and if the path we have to explore be dark and intricate, he might have taken his lantern and have gone before us; we should have been glad to have followed him and had the benefit of his illumination. But he has departed from the highway leading to the place of destination, and, like an *ignis fatuus*, has attempted to lead us through bogs and morasses, in order that we might mire or get lost on the way. My friend from Delaware has, however, taken him by the skirts and never let go, and is the evil spirit which haunts and pursues him wherever he flies. The honorable gentleman from Virginia commenced his observations by giving us a retrospective narrative of the rise and progress of political parties, their respective views and their different tendencies. And truly, sir, the history which he gave us was such a one as I have long since read in Callender's History of the United States, and his "Prospect Before Us;" but such a one as I had not expected from the urbane, accomplished, and very enlightened gentleman from Virginia. It the more resembles these histories, because, to the best of my recollection, there is in them both an open attack on that illustrious name which was once dear to us all, and which, however it may now be sought to be tarnished by foreign convicts and a few gentlemen who stand high in the honors of their country, is, I trust, still sweet in the lips of the great mass of the American people. This great name is now to be put down, together with all those federal ramparts which have originated under its auspices, and been sheltered in its shade. But whence this hostility to this name? That great man, (WASHINGTON,) whose strong penetrating intellect and sound discriminating judgment seldom led him astray, in a letter to a citizen of Maryland, happened to express a sentiment, that the democratic party in this country had been the cause of all the expense incurred in our preparations for resistance to the French aggressions. And is this the reason why to this moment, with all power in their hands, no one has been found making one solitary effort for the erection even of a pedestrian statue, expressive of a nation's gratitude to a nation's saviour, to whom there has been assigned by the Chief Magistrate of our country, for his revolutionary services, (nothing, sir, for his civil labors) the fairest page in the volume of faithful history? The gentleman from Virginia (Mr. GILES) proceeded to state, that there exists in this country a certain party whose object it has ever been, to embrace every opportunity of extending Executive patronage, and of nerving the Executive arm, for the purpose of elevating the constituted authorities above responsibility to the public will; that with this view, they, with that great man at their head,

FEBRUARY, 1802.

Judiciary System.

H. OF R.

(WASHINGTON,) had recognised, as a favorite maxim, the paradoxical maxim, that a national debt is a national blessing. My colleague has also observed, that such a party has existed and still does exist, and has endeavored to enforce the assertion of the gentleman from Virginia. I wish, sir, these gentlemen had been a little more particular and condescended, instead of dealing in general assertions, to have given us the names, the time when and place where these sentiments have been expressed. But it is well understood that these gentlemen allude to Mr. Hamilton, the first Secretary of the Treasury, and the author of the funding system. I think it is time these assertions should be repelled, or supported by better evidence than mere assertion. In order to see how far these categorical allegations are supported by the fact, I must solicit the indulgence of the Committee whilst I read to them, from Mr. Hamilton's report of the fifteenth of January, 1795, a few passages illustrative of this subject; The report begins thus:

"The President of the United States, with that provident concern for the public welfare which characterizes all his conduct, was pleased in his speech to the two Houses of Congress, at the opening of the present session, to invite their attention to the adoption of a definitive plan for the redemption of the public debt, and to the consummation of whatsoever may remain unfinished of our system of public credit, in order to place that credit on grounds which cannot be disturbed, and to prevent that progressive accumulation of debt which must ultimately endanger all government."

In page fifty-six of the same report, after recapitulating the different acts of the Government relative to the public debt, and the revenues provided to meet it, he goes on strongly to urge the propriety and necessity of establishing a sinking fund for its speedy extinguishment. Here follows his remarks on that proposition:

"There is no sentiment which can better deserve the serious attention of Congress than the one expressed in the Speech of the President, which indicates the danger to every Government from the progressive accumulation of debt; a tendency to it is perhaps the natural disease of all Governments; and it is not easy to conceive anything more likely to lead to great and convulsive revolutions of empire. On the one hand, the exigencies of a nation creating new causes of expenditure, as well from its own as from the ambition, rapacity, injustice, intemperance, and folly of other nations, proceed in unceasing and rapid succession. On the other hand, there is a general propensity in those who administer the affairs of Government, founded in the constitution of man, to shift off the burden from the present to a future day; a propensity which may be expected to exist in proportion as the form of the State is popular. To extinguish a debt which exists, and to avoid contracting more, are ideas almost always favored by public feeling and opinion; but to pay taxes for the one or the other purpose, which are the only means of avoiding the evils, is always more or less unpopular. These contradictions are in human nature, and the lot of a country is enviable indeed, in which there were not always men ready to turn them to the account of their own popularity, or to some other sinister account. Hence it is no uncommon spectacle to see the same

men clamoring for occasions of expense, when they happen to be in unison with the present temper of the community, well or ill directed, declaiming against a public debt, and for the redemption of it as an abstract thesis, yet vehement against every plan of taxation which is proposed to discharge old debts, or to avoid new, by defraying the expenses of exigencies as they emerge. These unhandsome arts throw artificial embarrassments in the way of the administrators of Government; and co-operating with the desire which they themselves are too apt to feel to conciliate public favor, serve to promote the accumulation of debt, by leaving that which at any time exists without adequate provision for its reimbursement, and by preventing from laying with energy new taxes, where new occasions of expense occur. The consequence is, that the public debt swells until its magnitude becomes enormous, and the burdens of the people increase until their weight becomes intolerable. Of such a state of things, great disorders in the whole political economy, convulsions, and revolutions of empire, are natural offsprings."

How far this report, when it speaks of a description of characters in all countries, whose business it is to indulge a constant clamor about the existence of a public debt, and who are equally noisy whenever a tax is proposed to reduce it, has described the gentleman from Virginia (Mr. GILES) and some of his adherents, I shall leave it to this Committee and the world to decide; but I am sure that his and my colleague's assertions are unsupported by the evidence before us. This man (General Hamilton) who has been constantly represented in all the jacobinical gazettes, and by the gentleman from Virginia, as wishing to create and perpetuate a public debt, it appears, was the first to propose a sinking fund for its extinguishment; in conformity with whose proposition that fund was established, and we were rapidly progressing in the extinction of the debt, and in the year 1798 had actually extinguished the sum of \$3,972,873. Here, sir, our operations were suspended; everybody knows the cause, and the gentleman from Virginia and my colleague ought to remember it. French depredations were now at their height, and whilst on the one hand they diminished our resources, on the other they created a necessity for augmenting our expenditures. The question was no longer how we should best diminish our debt, but how we should save our expiring commerce, a dilapidated revenue, and defend our territory.

But, Mr. Chairman, with all our anxieties for building up this system of patronage, and for accumulating the debt to effect it; with all our predilections for the British Government and subserviency to British influence, I believe there is no man to be found among us, whose solitudes have been so ardent, as to prompt him to propose to lend, or rather to give, to a foreign Government, five millions of dollars. Is the gentleman from Virginia (Mr. GILES) acquainted with the Governor of Virginia? Does he recollect of his being our Minister Plenipotentiary to the French Republic? Does he remember that whilst there he proposed to our Government, with no little importunity, to lend to our sister Republic, who was engaged in the common cause of republicanism

H. OF R.

Judiciary System.

FEBRUARY, 1802.

five millions of dollars; not absolutely to be repaid, but only to be repaid "if possible?" And did he express the opinion, that the people of the United States would cheerfully submit to bear the tax to raise this money, when they knew it was thus to be employed?

[Here Mr. RANDOLPH called Mr. DENNIS to order, stating it to be improper to allude to the official conduct of a man who was not present to defend himself. Mr. DENNIS being permitted to explain, said he had not approved the latitude in which some gentlemen had indulged themselves; but it must be in the recollection of the Committee that others had far exceeded him in the freedom of animadversion on absent characters; and that the gentleman from Virginia (Mr. RANDOLPH) had, in a particular manner, distinguished himself by his attack on a judge of Maryland. The Chairman decided against Mr. RANDOLPH, and declared Mr. DENNIS in order. Mr. RANDOLPH appealed; the Committee confirmed the opinion of the Chairman.]

Mr. DENNIS proceeded—It is remarkable, Mr. Chairman, the sum which that gentleman proposed to lend or rather grant, to the French Republic, was precisely the sum which we have borrowed at eight per cent. The only difference between us is this; that gentleman was willing to tax the people for the benefit of a foreign Government, and the money lent might have been, and probably would have been, employed in building vessels to prey upon our commerce. We were of opinion that it was better to borrow money, even at eight per cent. than to submit to the loss of our commerce; and that to employ it in procuring the necessary implements of war, for the defence of our territory and the assertion of our invaded rights, would be making a proper use of our money. But does the gentleman (Mr. GILES) suppose that Mr. Monroe, in his willingness to accumulate our debt, was actuated by the political maxim, that a public debt is a public blessing? And is that gentleman, notwithstanding, still high in his confidence? If we have ever expended money, we have erected forts and fortifications, replenished your arsenals and magazines with arms and military stores, and put into your hands a valuable navy, which we have employed to much advantage ourselves; a part of which the present Administration is now employing to advantage, and still will continue, I hope, so to employ. We have consolidated your resources, provided for the debt of the old Confederation, and left in your hands, after all the difficulties we had to encounter during a war, unexampled on many accounts in the annals of nations, more than four millions of national property.

But my colleague (Mr. NICHOLSON) has said a great deal about the war-worn soldier having petitioned Congress for a discrimination in his favor, between the original holders of the national debt and those in whose hands it was at the time this Government provided for its payment; and that when he petitioned, he was scornfully rejected, sent away to starve, and the speculator is now rolling in his chariot and fattening on his spoils.

Here, Mr. Chairman, my colleague is wholly mistaken in point of fact, for your war-worn veterans never did petition for a discrimination. They had no interest in a discrimination, for after they had sold their claims to these speculators, though they had great reason to regret they had done so, they had no claim and never set up any claim on the Government. The old Confederation was considered as bankrupt, unable to pay its debts; and not foreseeing the establishment of a Government better disposed, and more competent to do it, some of these soldiers sold their certificates for whatever they could get; and those who sold have never petitioned us. Perhaps he alludes to certain cases barred by the statute of limitations; if so, he will do me the justice to say, that I have been always in favor of the war-worn soldier, who has a claim, though it may be barred by the statute. If he will look around he will find as many of his political friends, who have opposed the opening of this statute, as of his opponents; and it is not at all a question connected with those different views which characterize the different parties. With respect to the proposition for discrimination between the purchaser and original holder, I shall be permitted to remark, that the principle in the first place is extremely questionable, and in the next is impracticable in its execution.

[Here Mr. DENNIS proceeded to animadvert on both these propositions at some length.]

He then proceeded—But, Mr. Chairman, why do these gentlemen talk so much about paying the war-worn soldiers; have they ever consented to a tax to raise money for them, or for any other purpose?

But, sir, we have created an army, according to the gentleman from Virginia (Mr. GILES) not because the threatening aspect of our affairs required it, or our views of impending danger suggested the propriety of the measure, but for the extension of Executive patronage; and, according to the intimations of my colleague, (Mr. NICHOLSON) to overawe five hundred thousand freemen, with arms in their hands and courage in their hearts, and humble them in dust and ashes. Since these gentlemen so often allude to the expense of the army, without any allusion to the crisis in which it was created, I must beg leave to recapitulate some of the circumstances which existed at the time. France, inspired with Roman ambition, and setting up pretensions to Roman supremacy, was at this time overstriding Europe, and trampling under foot every Republic in that quarter of the globe. The patriots of these Republics (for they had their patriots) complained of the tyranny of their rulers, the heavy taxes which they imposed, and called on this kind-hearted Republic for aid and assistance, to remove these oppressions. All on the alert, she readily obeyed the summons, invaded them as a friend, and demolished their ancient institutions, substituted in their place a military despotism, and at the point of the bayonet levied contributions in a few months, to an amount greater than these people had before paid for their own benefit in half a century. This, however, was then styled liberty and republicanism.

FEBRUARY, 1802.

Judiciary System.

H. OF R.

By the treaty of Campo Formio, the armies of France were liberated from employment in Europe, and they had nothing to do but look out for foreign conquests. The importunate demands of the soldiery for their pay, and the inadequacy of the means to pay them, rendered it very desirable to the Directory to get clear, on any terms, of fifty or a hundred thousand men. Bonaparte had collected at Brest and Toulon forty thousand veterans, with every requisite to transport them wherever his enterprising spirit might direct him. His destination was the subject of conjecture, and we had as much reason to apprehend it was for Louisiana, or some part of the United States, from the irritation which they had discovered towards us, as to suppose it was for the invasion of Egypt, whose barbarian regions held out much less inducements, and who had not provoked their resentment. In this situation we created a small military force, not to supersede the use of the militia, but who might be in readiness to meet the first onset of the invader, infuse into them a spirit of military discipline, stand in front of the battle, and cover a retreat, if a retreat should be necessary. This was my motive in raising this army, and I believe it to have been that of all those who united in the measure. Nor do I know, but for Nelson's victory and Suwarrow's campaigns, which we had not the powers of prophecy to foretell, these gentlemen would now be constrained to acknowledge the wisdom of the measure, and to regret that it was not further extended, instead of denouncing us as the enemies of the liberties of our country and its republican institutions.

Again, sir, we are told we created a navy; not because the French Republic, after plundering us under one pretext or another, for five years together, at length issued an *arrêt* which authorized an indiscriminate seizure of your merchantmen, and amounted to an universal proscription of your commerce. Not because her gun-boats were found in your own jurisdiction and limits, searching your most valuable shipping in your very ports and harbors; but for the purpose of strengthening the arm of the Executive, and introducing principles of the British monarchy. Those who are conversant with the history of that period, must remember that the only question to be decided when this navy was created, was, whether we should abandon the ocean, and basely surrender our unquestionable rights, or determine to defend them with all our energies. Whether we should abandon a commerce little inferior to that of any nation in the world; give up seven or eight millions of revenue; nine hundred and twenty thousand tons of shipping; sixty thousand seamen; and leave to your merchants the forlorn hope of deriving their subsistence from the plough, the axe, or hoe, and of being reduced to beggary and starvation; or whether, animated with the spirit of freemen, we would determine to protect them against the unprovoked aggressions, even of this mighty Republic. And it is well known, that the party opposed to us were disposed to consider the mercantile part of the community as so many outlaws, unworthy of our

protection. The gentleman from Virginia (Mr. GILES) has now discovered the importance of your merchants, and thinks there ought to be a strong sympathy between them and the Government; for they collect your revenues, and may greatly defraud you, unless you conciliate them by a reasonable attention to their interest. A friend in need, sir, is a friend indeed; and the sympathies of this gentleman and others, ought to have had an ample reason for their exercise on the occasion I allude to; but these benevolent sentiments at that time had no room in their breasts; This navy has re-produced again and again, the reimbursement of its expenses, and in a financial view has been all important. They talk of the direct tax; of their's being the repealing system; of abolishing the internal revenues; and claim great credit that they are enabled to dispense with them. What is the source from whence you derive ten millions of dollars? You must answer, from commerce. What would have become of this revenue, if, according to their system, it had been abandoned to its fate, and no navy created for its protection? What, if, according to them, we had not permitted the merchants to arm their own ships at their own expense? What would have been the resources on which you would rely for the payment of your debt, which they tell us they mean honorably to discharge, without borrowing? and what your means to meet the ordinary expenses of your Government? Alas! but for this navy, and the measures of those whose motives it is so desirable to gentlemen to asperse, instead of repealing your internal revenues, you would have been now under the necessity of increasing them tenfold! We have enabled them to pay the debt, to pay their friends now at the head of affairs, and to repeal the internal taxes, by the protection of our commerce; and whilst they claim all the credit from this measure of repeal, they cease not to villify the only act without which it could not have been accomplished. The only thing to be lamented, sir, is, that the creation of your navy was so long postponed; for otherwise we should not now be called on by your mercantile citizens for a reimbursement of those twenty or thirty millions which have gone into the pockets of French privateersmen.

But, Mr. Chairman, let us have a word or two on the subject of this Executive patronage. My colleague has said, we have looked up to the British monarchy as our prototype, and has read to us a passage from "Blackstone's Commentaries," to prove we have been servilely devoted to the principles therein contained. If he means that there is, and has been a party in this country that believes that the House of Representatives is not the sole depository of power in our Government; but that the Executive is as much the representative of the people for executive purposes, and the Judiciary the agents of the people, for judicial purposes, as we are for Legislative purposes; and that this party has constantly maintained a conflict, for the purpose of preserving to each department the powers which have been delegated to them by the people, against those who have un-

ceasingly exerted themselves to draw all power into the hands of this body; then I confess myself obnoxious to the charge. We have apprehended, on the contrary, that a success on the part of our opponents, in prostrating the Executive power with respect to treaties and foreign intercourse, so often essayed under the former Administration by the friends of the present Executive, and other powers which belong to that department over which this House has hitherto claimed a control; and as we now suppose the prostration of the Judiciary, which will be the inevitable result of this measure, would establish over our free and happy country, a legislative despotism, no less tolerable than the despotism of a monarch. That having broken down the other branches, they would proceed to organize their committees of Interior and Exterior Relations, of War and the Navy, of Finance, and ultimately of Justice; and absorb all the powers of Government in the tremendous vortex of legislation.

Mr. Chairman, the era of Executive patronage is precisely coeval with the commencement of the present Administration; yes, sir, it has been reserved for this Administration to attempt to establish a complete dominion over the heretofore free minds of your Executive officers, and to invade one of the most sacred rights of an American citizen, the right of suffrage! To expect, sir, that any President of this country can ever render himself formidable to our liberties by directly arrogating powers not vested in him by the Constitution, is farical in the extreme. Our ancestors emigrated to this country, when regal prerogative was in its meridian in the mother country; and, persecuted and suffering under the pressure of executive authority, all the jealousies of their descendants are directed to that quarter. But they are not aware of the various shapes which the Legislature may assume, from the indefinite nature of their powers, for the establishment of an unlimited authority. The Executive power is more definite, and the Executive Magistrate in this country who shall ever attempt a struggle with the Legislature, must yield in the conflict. But he may stoop to conquer, and by appearing to submit himself to the will of the Legislature, in order the more completely to govern them, and through them the people, under pretext of economy, or some other pretext, may rule us with an iron rod.

My colleague has said, he has heard of but few removals from office of Executive officers, and those defaulters and old Tories. He has formerly been in the habit of reading newspapers, for I recollect he gave us an account, which he said was taken from a newspaper, at the last session, of a man who died a victim under the Sedition law, who turned out still to be alive; and if he continues to be in the same habit still, he must have seen accounts of twenties and fifties of officers turned out of office, who were of neither of the descriptions alluded to.

Indeed I have known many war-worn soldiers deprived of their offices, but no old Tories. But suppose there were some of them old Tories, if they

had been ousted to make room for whigs, there would have been some excuse; but to turn out old Tories to put in old Tories, did not appear to be altogether consistent. [Mr. DENNIS then proceeded to state some instances of this nature, in support of his proposition.]

The gentleman from Virginia (Mr. GILES) has told us, that the tenure of good behaviour in the judges is only restrictive on the Executive, because it is an exception from the power previously delegated to the President, of displacing all other officers at pleasure. Has he shown us the passage in the Constitution which gives the President this general power of removal? He first supposes the power to exist by express delegation, which is nowhere to be found, and then makes this an exception from it. But he thinks he finds this power in the right of the President to commission all officers; and says, as he is to judge of the nature of the commission, he will of course commission them during his pleasure. Admit, sir, that he possesses this power under the Constitution, (but the truth is he possesses it under a Legislative act,) still it is but a constructive power, and the remark of the gentleman from Pennsylvania (Mr. HEMPHILL,) that they make one implication assist another implication in bolstering up this authoritative claim, remains unshaken. We have been told by my colleague and others, that the Legislature possesses the same power of creating and putting down courts and the judges, as of dismissing excise officers, and of changing post roads and postmasters; but these gentlemen wholly forget, that in relation to these no restriction on the Legislative power exists with respect to the tenure of their offices; and on this principle the tenure of good behaviour means nothing, and is no restriction whatever. I have, however, said that our opponents claim not only the prerogative of a British monarch, but also the omnipotency of the British Parliament; and as I think I have proved the first, will endeavour to support the second proposition. Here let me add together the different propositions which different gentlemen have advanced, in favor of their claims to legislative supremacy, and let me then resort to Sir Edward Coke's definition of the extent of Parliamentary authority, and I think it will result from the comparisons, that there is scarcely any power contained in the one which is not included in the other. The gentleman from North Carolina (Mr. WILLIAMS) says the sovereign power here, as in all other countries it must do, resides in the Legislature. The gentleman from Massachusetts (Mr. BACON) supposes we have the same power over the judges as over any other officer. A gentleman from Virginia says one Congress can undo whatever another has done (notwithstanding a Constitutional prohibition to the contrary.) My colleague (Mr. NICHOLSON) says the power of the people is like the sun, original and inherent, and we possess their power as their immediate representatives; and the gentleman from Kentucky has discovered a cure for all difficulties, and with his sweeping clause, tells us Congress have the power of providing for the general welfare, and may do whatever they may choose

FEBRUARY, 1802.

Judiciary System.

H. OF R.

to declare is for the public good. Now, sir, I will read to you the definition of the powers of the Parliament, and will defy those gentlemen to show me one of the high and mighty prerogatives inherent in that body, which they do not contend for.

[Here Mr DENNIS read, from Blackstone, Sir Edward Coke's definition of the powers of Parliament.]

He then proceeded.—Shall I be told, sir, they do not claim the ecclesiastical power? No, sir, for they are claiming an exemption from all the limitations of the Constitution, and converting it into an unlimited power of legislation. Yes, sir, to complete the catalogue of their unlimited demands, we are told the judges are bound to pocket their oaths, when they are called on to decide between a law and the Constitution, and are bound to yield to the will of Congress declared by law, rather than the will of the people proclaimed through the Constitution; that Congress, the creatures and agents of the people, are greater and more powerful than their creators, the people themselves. Congress, sir, are the attorneys of the people, and to them, the people, who are our principals, have not given an unlimited but a special authority to do certain things, and have expressly forbidden them from doing certain other things. We, however, not only do things not within our commission, but something expressly forbidden, and the judges are called on to decide between the people, their principals, and us, their agents; and we are told they are bound to decide, in this case, in favor of the usurped authority of the agent.

The Constitution declares, "Congress shall make no law respecting an establishment of religion," &c. Suppose we make a law establishing a national church, and compel persons of every religious denomination to attend that church under a certain penalty. Other sectaries refuse to comply, incur the penalty, and are prosecuted for its recovery. The defendant pleads the Constitution, which is the act of the people and the paramount law, and you say the courts are bound to convict them. Again, "Congress shall make no law abridging the freedom of speech or of the press." I have thought there is a distinction between the freedom and licentiousness of the press, and that, though a man publish what he pleases, if it be not wilfully and maliciously false; if he publish what he knows at the time to be false and malicious, in order to stir up sedition, tumults, and opposition to legitimate authority, he is an offender, and ought to be punished. But suppose, instead of punishing, as did the Sedition act, only malicious falsehood, Congress, in imitation of the Directory and Charles the First, should determine to put down all the presses which they suppose unfavorable to their ambitious views, and declare no man shall publish a newspaper without a previous license from an officer appointed by the Government; and suppose a printer proceed to edit a paper after being refused this license, and he is prosecuted, are the judges bound to convict? They say they are. Then, sir, the judges are the creatures of the Legislature, and not of the people; and whether they belong to us or the people, is the question now between

us. Shall they be our judges, and as in England they are said to be the mirror which reflects the image of the King, here reflect our image? If so, instead of being a security to the lives, liberties, and property of the people, they are to be made the engines of party vengeance, and the efficacious weapons of arbitrary and tyrannic power. Charles had his Star Chamber, and Robespierre his Revolutionary Tribunal, and by the sanction which the forms of justice gave to the indulgence of their wicked and vile propensities, they were enabled to veil the acts of oppression which their private animosities and aspiring views might prompt them to execute on suffering innocence. In this country, we may have our Hampdens and our Sidneys, some great characters, whose resplendent talents, whose prominent virtues, may render them obnoxious to the Government, and the united rays of Legislative and Executive indignation may kindle upon them; to what refuge will they fly? Shall I be told, if their estates are confiscated, if Legislative attainders should denounce them as traitors to their country, a Judiciary, the mere creature of the Legislature, is to protect them? Should they be imprisoned by the exertion of usurped authority, shall I be told we have a habeas corpus to bring them and their cause of commitment before the eyes of the public? Your habeas corpus is worse than nothing in the hands of judges, the mere sycophantic minions of Legislative influence. Tell me not I am winging my flight on fancy's pinions; the Constitution has supposed the existence of these abuses, and to say they will not happen is to be wiser than the Constitution. Let us, sir, be more just to that enlightened and patriotic Convention who formed that instrument, than to suppose they meant to guard only against the remoter evils of Executive influence, and leave your Judiciary to the varying dominance of alternate Legislative factions. No, sir, they read of Legislative attainders, Legislative confiscations, and Legislative banishments, and therefore declared, "no bill of attainder, or *ex post facto* laws, shall be made." Nor were they such mere novices in political science and the knowledge of human nature, as not to know, that these paper restrictions were of little avail without the practical means of giving efficacy to these declarations. And it was for this purpose that they rendered the Judiciary a co-ordinate department of our Government. I can hardly forbear to smile at the ridiculous conceit, when I consider this subject in connexion with the constitution of Maryland. That constitution declares, "the independence of the judges is essential to the upright and impartial administration of justice and a great security to the lives and liberties of the people." Against whom are the judges this security? They answer, only against the Governor. Who is the Governor, and what the extent of his powers? The mere President of a Council, who, together with himself, are annually chosen by the Legislature, and possesses scarcely any attributes of sovereignty, whilst the Legislature are invested with almost unlimited power. Now let me ask our opponents if it be expedient, if it be desirable to any party, that all our politi-

cal prejudices, our party passions, should mingle themselves in our Judicial tribunals; that causes should not be decided according to their merits, but according to the political principles of the litigants? Spies and delators will swarm around, and hold inquisitions over your courts; and instead of applying to the Executive, as at present, for removals of Executive officers, a base sycophantic tribe will assail us with continual applications for the abolition of offices.—“In a certain cause, a certain judge has abandoned his party and decided in favor of an aristocrat, and has held doctrines incompatible with republicanism; he no longer deserves well of his party, and his office must be abolished, to make room for a more zealous partisan.” Such will be the language of your patriots, and such the result of the principles of the bill before us.

We are about to revive the old system; a system which heretofore has been universally admitted to be defective, but which is now discovered to be susceptible of no amelioration.

Here, sir, I cannot but express my own, and I am sure the world will unite in the expression of their astonishment, that they should declare, that a federal Congress, who never did one solitary thing before which has not called down upon it the reprobation of these gentlemen, should have made on the first experiment, a system involving above all others the most complicated and difficult questions, which is so entirely perfect as that the united republican wisdom of all the departments cannot discover one single amendment. Sir, I cannot believe it, but must suppose that this old system is to be restored, not because it is the most perfect which can be devised, but because it may be more compatible with the views of our opponents to provide for some of their political friends than the one now in existence. It will not do for them to abolish the existing courts, and re-enact them for the purpose of substituting, in the place of the present judges, others of their own political principles. This is too bold a measure even for the enterprising spirit of the majority to attempt. But they may restore the old system, and add a few of their friends to the Supreme Court. But have they answered the objections to that system? Have they refuted the invincible observations of my friend from Delaware, on the oscillation of justice, and the irretrievable injury resulting to suitors, from the constant change of judges, with their predilections for, or their antipathies to the varying practice of different States? No, sir, here little David himself, in the stoutness of his heart, thought proper to shrink from the conflict. Alas! he had now lost both his stone and his sling, found it prudent to fly from the field of battle, and had ample reason to regret his disobedience to the admonition of Saul, for refusing in his eagerness for the combat to bring with him his brazen helmet and his coat of mail. Are they afraid to give this system one year's experiment, lest it should refute their calumnies, and demonstrate to the public that these judges, whom they are pleased to denominate pensioners, will have business enough, and more

than they can perform? I will dare predict, sir, that another session shall not have transpired, when they will discover, what everybody now perceives, the defects of this very perfect old system, and improve it by the addition of seven new judges. Can nothing stay the uplifted arm of party vengeance from prostrating our political fabric in the dust? It is in vain that we have with us in opinion the whole choir of Virginia judges, formerly expressed on an analogous occasion; and among these I recognise the names of Pendleton, of Wythe, of Tazewell, of Tucker, of Tyler, and of others, who for the respectability of their legal and political information, are, with our opponents, in high estimation, and all of whom are associated in their political labors with a majority of this Committee. It is vain that the nation is divided, and men of all parties, respectable for their information, contemplate this repeal as aiming a vital blow at the fundamental principles of the federal compact; yes, they have commenced the work, and it must be accomplished. It is equally vain that we recommend to them the perusal of Mr. Jefferson's Notes on Virginia, in which he deplores that in that State all the powers of the Government were resolved into the will of the Legislature; that it had been the intention of the framers of their Constitution, to keep separate the three departments; but as the Judiciary and Executive were left dependent on the Legislature for subsistence, and some of them for their duration in office, the Legislature were daily in the habit of directing them both, in the performance of duties exclusively delegated to those departments. We deplore the circumstance, that by these means there was a consolidation of all power in the hands of the Legislature, which, says he, is precisely the definition of despotism. It does not avail us that they are chosen by ourselves, an elective despotism, says he, was not what we fought for. We are to reject, however, all those high authorities and many others, and all those important considerations, in pursuit of British analogies.

Sir, there are but two alternatives if we abolish this system. You must either increase the number of the judges of the Supreme Court, in which case no money will be saved, or devolve on State authority the execution of your laws. I have always conceived the greatest improvement of this Constitution over the old Confederation, consists in its having the capacity to act on individuals and not on States merely, in their corporate capacity. But we are now to be carried back to that old exploded system, and as we formerly depended upon requisitions for revenue, are now to resort to them for supplies of justice. In case of conflicting laws between the States and the United States, we are to depend on State judges, the dependants of State authority, and the servants of State Legislatures. Here, Mr. Chairman, I find it vain for me to attempt a development of all the different topics. I feel myself greatly exhausted, and I feel for you, sir, and for the Committee. It was my intention to have given a particular detail of the circumstances attending the Presidential election; but I will content myself with a few

FEBRUARY, 1802.

Judiciary System.

H. OF R.

remarks concerning it, and conclude with them my observations on the bill before you. The gentleman from Virginia (Mr. GILES) has mentioned this subject for reasons apparent to us all, but from his own statement, that perturbation, and those angry passions with which he would persuade us the act of last session was accompanied, were excited long subsequent to the passage of the bill. He has read to us the journals to show, that when the bill was returned, signed by the President, we were about to proceed to the twenty-sixth ballot. But the bill had originated and passed this House, gone to the Senate and passed through its various forms, before we commenced that operation which excited that ill humor and those party feelings which he attributes to that transaction.

But that gentleman is under a great mistake in point of fact. Yes, I believe the general idea, during that memorable occurrence, was, that we were influenced with all that passion and irritation which party zeal and mutual hatred could inspire, and were tearing each other to pieces, whilst shut up in conclave. Nothing, however, is more remote from the fact. Called on to ballot periodically, and liberated from that rigid confinement to our seats, necessary in the transaction of our ordinary business, we were at liberty to mix together, and indulge ourselves in social intercourse; and since I have been a member of this body, I never saw so much freedom of communication and good nature displayed by gentlemen of different parties, as prevailed on that occasion. I happened to be one of those who were rendered conspicuous from having it in my power to decide the vote of a State. From the moment I knew the two candidates, I did not hesitate to decide that, in my opinion, the interests of the nation would be best promoted in the election of the Vice President. The friends of these gentlemen had presented them to us as equal in their view, and constitutionally they were equally favored with the public will. I did believe there was great doubt on which side the majority of the people preponderated. Almost all those denominated federalists, I did presume, preferred Mr. Burr; and, by adding to them his particular friends in New York and elsewhere, it was problematical, at least, whether he had not with him the major part of the community. One gentleman (Mr. RANDOLPH) has alluded to the blank votes, which from certain States were the evidences of a dereliction of the contest; and has intimated that they were put in from a fear of responsibility, and for purposes of concealment. That gentleman was at the time applying his observations to the gentleman from Delaware, and it is wonderful he did not perceive that as he (Mr. BAYARD) was sole Representative from the State, that object would not have been effected. It is a notorious fact, however, that before the ballot, it was known by the whole delegation of Maryland, and of other States, who put in the blanks, and to all those who sat in the vicinity of them, that this was the mode in which the contest was to be abandoned. Our reasons for this mode are best known to ourselves. I have no particular objection to explain them, however, had

they any application to the subject before us. I will now conclude, though I have not exhausted the observations which I had to make on this subject, and with great cheerfulness resume my seat.

Mr. S. SMITH.—The question, Mr. Chairman, is not whether it was the President or Vice President of the United States whom the people meant should preside over the affairs of the Union. The question is not whether Bonaparte ought to have detached the right wing of the army of Egypt to this country, in order to verify the fears of certain gentlemen. The question is not whether the President was justifiable in selecting for the high offices of Government, men eminent for their talents, men distinguished for their republican principles, for their abhorrence of the system heretofore pursued, and friends to a system which the people had, by their late elections, strongly marked as that which they wished to be adopted. The question is not whether Mr. Charles Pinckney, who signed the Constitution of the United States, a gentleman always high in the confidence of the citizens of South Carolina, whom they had twice elected their Governor; whose services were so highly approved, that immediately after his last term as Governor had expired, the Legislature of that State had chosen a Senator of the United States, was or was not a bad character. The question is not whether Mr. Edward Livingston, whose shining talents are well known to members in this House, had discovered some new merit that had induced the President to believe him fit for the post of District Attorney. No, sir; the question is, shall the first section of the bill (now on your table) to repeal the act entitled "An act to provide for the more convenient organization of the courts of the United States," be struck out? This subject, Mr. S. said, had been very properly divided into two parts, the one the constitutionality, the other the expediency of the measure.

To prove that Congress have not the power to repeal the law in question, the gentleman from Pennsylvania (Mr. HEMPHILL) has favored the Committee with his observations, nor had he, Mr. S. since heard anything on the Constitutional point that had not been embraced by the speech of that gentleman. He had been fully answered in a very luminous speech by the gentleman from Virginia, (Mr. GILES,) and very ably by the other gentlemen on the same side of the question. It will not, Mr. Chairman, be expected that one whose pursuits in life have not been professional, will attempt to expound the Constitution to this enlightened body, even if he had the power. Mr. SMITH said he would not be able to find one idea not already presented to the House by gentlemen who had preceded him. He hoped, however, that he would be permitted to say, that in that House, in the Senate, nay, throughout the United States, gentlemen learned in the law were divided on this question. Did this division arise solely from a collision of sentiments? Or did it arise from the line which divides the parties of this nation? Wherever he looked he found the professional gentlemen of one party (with a few exceptions) giving their decided

opinion one way, and those of the other directly the reverse. How then are men not professional to form their opinions on this great and important question? He knew but one way; that was, to read the Constitution with care, with attention, and to judge for themselves. This, Mr. S. said, he had done, and he had no hesitation in saying, on the oath he had taken, that Congress had the Constitutional power to pass the bill on your table. In this opinion he was warranted not only by the opinions expressed in this House, but by men highly respected for their talents, integrity, and enlightened understanding, in the different States. He had seen the opinion of a great law character in Massachusetts; he had understood it also to be the opinion of a gentleman in Connecticut, not inferior to any in the bar of that State. He knew it to be the opinion of gentlemen of the very first legal abilities in the State of New York. It was unquestionably the opinion of some of the legal characters, the most eminent at the bar of Philadelphia; and the letter read yesterday had shown it to be the opinion of the greatest law character in that State (he meant the Governor) that Congress had the Constitutional right to repeal the law in question. In the State of Maryland, Mr. S. said, many gentlemen, learned in the law, concurred with him in opinion on this important subject. One gentleman of high federal authority had told him, that he had no hesitation in saying, that Congress had the Constitutional right to repeal the law of the last session, but that Congress were bound to provide for the payment of the judges' salaries. This opinion, high in authority, concurs fully in the power of the Constitutional right Congress has to pass the bill before you. The providing for the judges' salaries will be an after consideration. Congress may hereafter determine whether men rendering no service ought to be paid out of the public treasury. He might, he said, go through the States southward, and quote the opinions of gentlemen equally eminent for their talents and ability, confirming the one he had formed, but this he conceived would be unnecessary.

When the gentleman from Virginia (Mr. GILES) had quoted the statutes of Great Britain, he did not understand him to give them a preference over the Constitution under which we act. On the contrary, he quoted them to show, that although the judges were removable by a joint vote of Parliament to the King, yet that it had never been said that the judges of England were not sufficiently independent; their complete independence has been admitted by gentlemen here, and has been the glory and boast of Englishmen. An instance of that independence had been given in their conduct in the case of Wilkes, read (with a contrary view) by the gentleman from South Carolina. The gentleman from Virginia (Mr. GILES) meant to show, and in his opinion did show, that if the judges of England had been deemed independent for ages, although removable by a joint address of Parliament, that the judges of the United States were much more so, when, agreeable to his construction of the Constitution, they were not removable in any way but by impeachment, or

when the courts in which they presided were deemed by the three branches of the Legislature to be useless and unnecessary. The gentleman (Mr. GILES) stated emphatically, that the judges were not removable from office, either by the President, or by the two Houses of Congress. But he contended, and with great force, that the power which had organized new courts, could constitutionally put them down. In answer to this, the gentleman from Delaware had said, and seemed to rely much on the observation that it is truly paradoxical, that the body having the power to check, should be at the feet of the body to be checked. The gentleman from Delaware has himself favored the Committee with a solution of this paradox; for he has said, that by the Constitutions of Delaware and Pennsylvania, judges in office during good behaviour may be removed by a joint address of two thirds of both branches of the Legislature to the Governor. On such address the Governor cannot refuse to remove. Here then the gentleman has himself shown, that the judges of Delaware and Pennsylvania, having the power to check by declaring a law unconstitutional, can be brought to the feet of the body checked, to wit, the Legislature, who can, by a joint address, cause them to be dismissed; yet those judges are quoted by the gentleman himself, as being completely independent. Will the gentleman from Delaware say, that the judges of that State are as secure in their offices as the judges of the United States, under the construction of the Constitution assumed by the majority? He certainly will not. The gentleman from Delaware has said, that worse men will probably succeed the present majority, who will repeal the Judiciary laws, and re-enact them immediately, for the express purpose of dismissing the judges; and this, he says, has been done in Maryland. In that State, the gentleman said, they had repealed their Judiciary law for the avowed purpose of dismissing certain judges obnoxious to their politics, and re-enacted the same law without making one solitary amendment. The gentleman was totally mistaken. The fact is, that many valuable amendments had been made.

His colleague (Mr. DENNIS) had also said, that the gentleman who had introduced the bill to repeal the judiciary law of Maryland, had avowed that his sole object was, the dismissal of the judges. Suppose this to be the fact, does it prove that the law was passed with that view? No, sir, the law would not have passed, had there not been many and very beneficial amendments introduced into it. Mr. S. said, he believed that this was not the first attempt made in Maryland. His colleague, (Mr. DENNIS,) would remember an attempt to put down the General Court, and make the judges ride the circuits to each county; lest however he should have forgotten, he would remind him that the gentleman who had proposed putting down the court, had likened it to a faro table. His colleague will probably recollect that he was himself the prime mover in that attempt. His colleague, (Mr. DENNIS,) had read a part of the Bill of Rights of Maryland, and said, he could not but smile when he heard a gentleman from

FEBRUARY, 1802.

Judiciary System.

H. OF R.

that State (Mr. NICHOLSON) endeavoring to destroy the independence of the judges, in direct violation of the Bill of Rights of his own State. Had this gentleman read farther, he would have found that a judge of Maryland "holding his office during good behaviour" may be removed by a vote of two-thirds of each branch of the Legislature. Is their security in office, Mr. S. asked, equal to that of the judges of the United States? And yet his colleague would not say, that the judges of Maryland were not independent. Mr. S. then said, that although unequal to the discussion of the Constitutional question, yet he hoped he might be permitted to judge of the expediency of the measure. It had been objected to the old Judiciary system, that men, venerable for their years, were unequal to the labor of travelling from one end of the United States to the other to hold their courts; he would admit that two of the judges of the Supreme Court were advanced in life, but he could not admit that the other four were; they were all younger than himself. But he asked, why did the judges ride? They were not compelled by law. It was optional with themselves, under the first law, to have divided the circuits, so as each should have taken that circuit most convenient to himself, nor is there anything in that law as it now exists to prevent them. Why did the judges not make such a division? Perhaps, he said, they might have had a desire to see the country, and proposed riding, or it may be that a mode so troublesome might be expected to promote the favorite object of confining their duties to their holding the Supreme Court only. If that was their object, they fully succeeded by the passage of the Judiciary bill, now meant to be repealed. When the present bill has passed, it will be fully in our power (and he would not vote for its passage, if he was not perfectly assured that it would be done) to introduce a bill amending the old system, so as that each judge of the Supreme Court shall have his particular circuit designated, at which he shall preside. For instance, the United States may be divided into seven circuits; the first circuit to include New Hampshire and Massachusetts, where Judge Cushing may preside, his associate judges to be the district judges of those two States. The second circuit to include Vermont, Connecticut, and Rhode Island, where Judge Patterson may preside, and his associates may be taken from the district judges of those States. The third circuit to include New York and New Jersey, where Judge Marshall may preside, and be associated with the district judges. The fourth circuit to include Pennsylvania, Delaware, and Maryland, at which Judge Chase may preside. The fifth to include Virginia and North Carolina, at which Judge Washington may preside. The sixth to include South Carolina and Georgia, at which Judge Moore might preside. The seventh to include Kentucky and Tennessee, which may be conducted as it now is, or it may return to the ancient system, or a new judge of the Supreme Court may be appointed to preside there, as gentlemen from those States may conceive will best answer the interests of their fel-

low-citizens. On this plan, the objections of the gentleman from Delaware (to wit: that three judges had, all coming in turn to one court, decided differently on the same case.) will be avoided. This system will satisfy the bar of Philadelphia, for it will secure to them a court in the same manner as it now is held, with the additional dignity of having at its head one of the Supreme Judges of the United States; and it will obviate the objection made on account of the judges travelling; none of the gentlemen will have more riding than what will conduce to their health; and above all, it will avoid that want of uniformity in decisions, which must result out of the present system. It has been observed that more speedy justice is had in the courts of the United States than in the State courts, and therefore strangers would prefer going into them. It is true, Mr. S. said, that this had been the case, when the judges of the supreme courts presided in the circuit courts, but not so now. He spoke only of Maryland: in the last circuit court held in that State, a rule was adopted and established, by which it requires the same time to obtain judgment in that court, as it does in the General Court of Maryland. Here, then, is an essential difference already commenced in the manner of conducting our courts. For instance, a citizen of Maryland sues a citizen of Pennsylvania in the circuit court of that State, and recovers the first or second court; the same citizen of Pennsylvania brings a suit in the circuit of Maryland, and to his astonishment he will find his recovery procrastinated from year to year, perhaps for four years; thus the plaintiff is greatly injured, so far as relates to the State of Maryland by the new system. Let us go back, he said, to the ancient system, and we may then expect an uniformity in the courts throughout the Union.

Mr. S. then said, that he would take leave to remark on some of the observations made by gentlemen in the course of the debate. The gentleman from Virginia (Mr. GILES) had taken a very masterly view of the measures pursued from the commencement of the Government, which, in his opinion, led towards monarchy; he criminated the views of none, but showed that such measures, had they been pursued, would have gone to the destruction of our republican form of Government; he terminated this view by showing that the Judiciary law was passed the last session by an expiring party, not as a shield to protect them, but as a strong arm (to which they willed all power) held over the Administration, always uplifted, and ready to thwart, perplex, and strike the Government. And has not the gentleman from Delaware fully warranted this opinion, when he said that the judges ought to be of a different opinion from the Legislative and Executive branches? For those two, he said, will always come into power with the same sentiments and at the same time. Is it not fair then to conclude, from this candid declaration, that the law which gentlemen from the Federal party would not themselves permit to pass in 1800, when they retained the power, they did pass in 1801, when they knew that all

power had been taken from them? Is it not fair to conclude that the law was passed for the sole purpose of embarrassing the new Administration, by a new corps of men, clothed with omnipotent power, and hostile towards it? And is it not just, is it not right, to repeal a law passed with views so wicked? It has been said by the gentleman from Delaware, that he never did hear a Federal man even hint the most distant wish towards a consolidation of these States. He could not doubt the gentleman's veracity; but he would say, that he (Mr. S.) had been warned by a Federal gentleman against the Judiciary bill, when introduced in 1800; he had been then told that this was considered as an entering wedge, and that the Federalists hoped, if they succeeded, to be able to establish courts in every county of the States; that it was believed causes would be more speedily decided in courts of the United States than in the State courts; that State courts would first be neglected and afterwards deserted, then declared useless, and thus, step by step, we should be led to a national Government. But he did not mean to say that such was the opinion of all the Federal party; he would indeed be sorry to think it was.

Objections had been made to the President for presenting the document No. 8. It had been said that he had no right to send that document; that it was officious. This, Mr. S. said, was a doctrine entirely new to him. The President might send documents relative to every other subject, but he must not peep into the courts; and why? Because it is said that no other President ever did furnish a judicial document. And here, Mr. S. said, he could but express his regret that the last President had not (when he pressed the law upon Congress) supplied such documents; if he had, every gentleman would then have seen how unnecessary the law was, and no member would have been bold enough to have proposed the creation of sixteen new judges, with salaries of two thousand dollars per annum, when it would have been palpable there was no business for the six judges then in commission.

Mr. S. said, that of all the abuse poured out in this House, or in public prints, to sully the fair fame of the Chief Magistrate of the Union, none had so much surprised him as that which had just fallen from his colleague (Mr. DENNIS.) What spirit was it that could induce a gentleman so mild to enter into such unqualified abuse of the President, and through him of gentlemen in private life, and in public employ, by name? The gentleman had, contrary to all order, attacked the Governor of Virginia; he had charged Judge Stevens, of Georgia, with having deserted to the enemy. For this he has been severely checked by the gentleman from Georgia, (Mr. MILLEDGE,) who declared that information to be a malicious calumny against a man who more than once fought in his country's cause, and ultimately was taken a prisoner; as an apology his colleague (Mr. DENNIS) said he had his information from the Washington Federalist. His colleague had charged the President with turning out an old and meritorious officer, the late Navy Agent of New York, and appointing

an old tory in his room; here his colleague had again been mistaken. The President has nothing to do with the appointment of the Navy Agents; they are appointed by the Secretary of the Navy, and by him considered as a merchant, doing business on commission. Of the high respectability of Mr. Ludlow, as a merchant and an honest man, no person, would express a doubt; of his predecessor he would say nothing; a suit was now depending between him and the United States; until that was determined it would be highly improper to give an opinion of his conduct anywhere, but at all times improper, by name, in this House. His colleague had heard of hundreds of meritorious officers turned out of office without fault, and this he also got from newspapers. Mr. S. doubted whether there were five turned out of office on political ground. If gentlemen really wished for information, why an officer had been put out, let them apply to the proper office and they will be informed. He (Mr. S.) had done so; in the case of the Collector of Savannah he did so, because he had seen several names (which he knew) to an address to that gentleman, highly censuring the President for his dismissal; on inquiry he had found that the collector was not dismissed on political ground, but because he had never settled one single account from the time of his appointment, although the law is peremptory that every collector of the customs shall settle his accounts every quarter of a year. Let gentlemen inquire and they will find that there has been good cause for most of the removals. But they will not inquire. It is better for men disposed to calumniate the Administration to take newspapers than official information. Mr. S. again inquired what spirit of faction was it that could induce a gentleman so amiable in private life, to permit himself to assail gentlemen by name under the privilege of that House? His colleague stumbled on the case of the Berceau, and charged the President with expending the public money on that ship without authority. Does he mean to insinuate that the President is prodigal of the public treasure? If he does, nobody will believe him. How is the fact? The late Secretary of the Navy directed on the nineteenth of December, eighteen hundred, that the Berceau should be purchased for the United States; the same gentleman directed that she should be restored under the treaty, with all her guns, ammunition, apparel, and everything belonging to her; that the delivery should be made as if there was no reluctance accompanying the restoration, and in such manner that no cause of complaint should lie against the Government or its agents. And conformably with the opinion and advice of the late Secretary of the Navy, Mr. Stoddert, a letter was written on the first of April (the day after that gentleman resigned) in the following words, to wit:

"I have to request that you will be pleased to ascertain, without delay, the state of the French national ship *Le Berceau* was in at the time of her capture, as to her armament, stores and provisions, and to cause her to be put in the same condition before she is delivered to the French Government."

MARCH, 1802.

Judiciary System.

H. OF R

He knew the amount of repairs must appear large; but he had such high confidence in the Navy Agent of Boston, that he would not believe one dollar had been spent improperly. The ship having been bought for the use of the United States, the appropriation for the navy (of which she then was one) fully covered the money expended. His colleague (Mr. DENNIS) in a triumphant manner had boasted that near four millions of the principal of the public debt had been paid off against the year 1798. If there was credit assumed for paying less than four millions in nine years, how much more is due to the present Administration which in nine months had paid off two millions two hundred and seventy-nine thousand dollars of the principal of the debt, and had then remaining as much money in the Treasury as had been received from the late Administration? It will perhaps, he said, give his colleague pleasure to know that at least four millions more of the principal of the debt will be paid off in the course of 1802. Our constituents, he believed, will be better pleased with the payment of the old debt, than the contracting of a new debt at an interest of eight per cent. His colleague had asked, who was it that talked of the merchants as outcasts of society, as men not worthy of protection? Mr. S. in return, asked who ever did? No person had in that House during the present session; and before this session, he had never known gentlemen of any party so far forgot themselves as to go into unqualified abuse of men by name. He had known on former occasions the measures attacked, but never the men. That conduct was left for the friends of order to assume.

Mr. S. said that, during his absence for a few minutes from the House, he had been told that a gentleman from South Carolina (Mr. RUTLEDGE) had charged the President with having thrown away thirty-two thousand dollars in the expenses of sending a gentleman to France, in the frigate *Maryland*. In this charge the gentleman was unfortunate. He had stated the cost at thirty-two thousand dollars: the real cost of the voyage was but seventeen thousand four hundred and twenty-eight dollars, as appeared by a statement which he read. How was the fact? The *Maryland* was prepared by an order of the last President, and was actually held in readiness from the beginning of February, to sail at a moment's notice with a Minister for France. Her crew was on board, and the ship was anchored below the fort.

The *Maryland* being prepared, it would have been the height of folly not to have sent the treaty by her. Suppose a messenger had been sent by a private ship, and she had been met by a British ship-of-war or privateer, is it not certain that she would have been detained? And would not the gentleman from South Carolina, in such case, have censured the President for an ill-judged economy? Would not the merchants very properly have complained at the delay occasioned thereby to the restoration of their ships? These circumstances, he presumed, had induced the President to direct the Secretary of the Navy, on the 17th of March, to order the *Maryland* to proceed with the gentleman who was bearer of the treaty.

Mr. S. then read the President's letter to Mr. Stoddert, the Secretary of the Navy, in which were the following words: "The gentleman who is the bearer of the treaty is of course to have good accommodations in the vessel, and a participation of such fare as is provided for the officers themselves."

Observe, said Mr. S., that particular expense on account of the bearer of the treaty was actually forhid.

The gentleman from South Carolina had also (if he had been rightly informed) been unfortunate when he said that an enormous expense had been incurred by sending the Boston to carry Mr. Livingston to France. The Boston was considered as one of the six ships peremptorily ordered by law to be kept in constant service. She was bound on a cruise to join the Mediterranean squadron, called at New York for Mr. Livingston, and on her route landed him at L'Orient, the nearest port in France. This cost the United States only the short delay of the ship; for Mr. Livingston found his sea-stores at his own expense. Under the late President the sea-stores of Ministers and Envoys were found, when on board a ship-of-war, at the public expense, and seldom cost less than one thousand five hundred dollars—sometimes much more.

[Here Mr. RUTLEDGE assured Mr. SMITH that he had not mentioned the Boston, and Mr. S. had been misinformed by his friend.]

Mr. S. then said, that he had no doubt of the constitutionality of the repeal, nor any of its expediency, and therefore should give his vote against striking out the first section, and in favor of the bill.

When Mr. S. had concluded, a motion was made that the Committee should rise, which was supported by Messrs. HILL, HUGER, DANA, BAYARD, MACON, HOLLAND, GRISWOLD, BACON, CLAIBORNE, and PLATER; and opposed by Messrs. ALSTON, GILES, and SMILE.

At eight o'clock the question was taken—yeas 46, nays 43.

The Committee rose, and asked leave to sit again; on granting which there was a division—yeas 48, nays 37.

MONDAY, March 1.

A memorial of Stephen Sayre was presented to the House and read, praying that Congress will consider and decide on the petitions heretofore presented by the memorialist, relative to an adequate compensation for his services and expenses as Secretary to the Commissioners of the United States at the Court of Versailles, in the year seventeen hundred and seventy-seven.

Ordered, That the said memorial be referred to the Committee of Claims.

JUDICIARY SYSTEM.

The House then resolved itself into a Committee on the bill, sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. HILL said the few observations he had to make he would have offered before to the Committee could he have done so without interfering with other gentlemen better qualified to do justice to the subject.

The best exertions of his humble talents would at all times prove unequal to a question of such magnitude as the one under consideration. Vain indeed then must prove the attempt after the subject had been so well considered, and the arguments so entirely exhausted.

He had determined to express his opinion by his vote merely. He lamented the impulse which obliged him to forego that determination—an impulse created by allusions too direct to be mistaken.

His respect for the Legislature of the State from which he came also required he should assign his reasons for the conduct he should pursue. That Legislature had recommended to the Representatives of that State to vote in conformity to the bill on the table. However great his respect for that Legislature—however much he was inclined to obey its requisition—yet, when he found that respect conflicting with important duties—when those requisitions are opposed to obligations, sacred obligations, which imperiously direct another course, he could not hesitate in his decision. His conduct must be consistent; he voted for the law proposed to be repealed under the full persuasion that it was expedient; he could not vote for the repeal, because he was equally persuaded it was inexpedient; because he did not consider himself authorized so to vote. He stated that when he came into Congress, he came with the conviction full on his mind, that the Judiciary was a distinct, important, independent branch of the Government; that to be efficient it ought to be well organized; that the then organization was defective, greatly so; that he knew from experience it was greatly defective; having been for several years an officer of the United States, in their established courts, he had an opportunity of acquiring this knowledge by experience; that to a reform of the then existing system, the only alternative which presented itself was a resort to the courts of the several States. Considering it a solecism in the science of Government, that one Government should intrust the administration of its laws to the officers of another, over whom it had no control; believing that no responsibility attached to the State judiciaries, which would oblige them to perform duties imposed on them by the General Government, and knowing the jealousy of the State governments, which had been frequently evidenced against an amalgamation of National and State authorities, the necessity of a reform presented itself with great force.

The circuit courts, as formerly established, were directed to be holden by the judges of the Supreme Court, and the district judges in their respective districts. By this arrangement six judges were required to ride over this vast country twice in each year; to hold courts as often in every State, and this in addition to the duties required of them as judges of the Supreme Court; the

consequence was, that with all their exertions these judges found themselves unequal to the performance of those duties; and nothing but a reliance on the wisdom of Congress, which cherished the hope of a new arrangement, retained them in office. Under that establishment the lapse of terms would unavoidably occur; it did occur frequently, and occasioned great injury to all concerned in the courts. Another evil was the want of identity, and the resulting want of consistency of decision in those courts—productive of delays and uncertainties, which could not fail to depreciate the character of the Judiciary, however upright and independent the judges—that was an important defect also which allowed the same judge to decide on your appeal, who had pronounced judgment in your cause in the inferior court. These and many other important reasons, which had been or might be adduced, had decided his mind in favor of a reformation in the Judiciary system. Accordingly, in the first session of the sixth Congress, he had given his vote for a more convenient organization of the courts of the United States, and in the last session he pursued the same course. Actuated by a wish to promote the due administration of justice, to elevate the character of the American Judiciary, and to insure the independence of the judges, as the safeguard of the Constitution, he had invariably given his support to the law proposed to be repealed; he believed it to be expedient; he was satisfied it was Constitutional; he still had the same impressions; and when he added, that not a doubt existed in his mind that a violation of the Constitution is involved in the proposed repeal, he should be justified in voting as he should vote on the present occasion. But, sir, it is said that the Constitution has already been violated; that the law proposed to be repealed violated the Constitution; that this assertion was groundless, Mr. H. apprehended, had been clearly demonstrated. But suppose it was fact, would that justify a second violation? He knew that in some languages it was taught that two negatives made an affirmative; but he had yet to learn the principle in morals which establishes that two wrongs will make one right. If gentlemen really believe the Constitution has been violated, let it be to them an example to deter; let us unite our efforts to heal the wound, and join in deprecating the attempt that would enlarge it. But how has the Constitution been violated? By detaching, it is said, from the judges of the Supreme Court, and the district judges, the right of holding the circuit courts; let us examine this. It will be recollected, that previous to the law of last session there was no circuit judge; the duties of the circuit court were imposed on the judges of the Supreme Court and the district judges; to relieve those judges from this imposition was one object of that law; another object was to make an arrangement that should not require the judges to perform greater duties than they were able to perform. Is it not a strange doctrine that the lessening the burdens of office, the diminution of the duties required to be performed by a judge should

MARCH, 1802.

Judiciary System.

H. OF R.

be considered as an infraction of his rights? But the last law imposed on some of the judges other duties, which might be considered in lieu of some of those from the performance of which they were relieved; for instance, by certain provisions in the law, the judge of North Carolina district is required to hold nine district courts in each year, and at three places in the district; previously he held but four district courts, and those at the same place; that judge might have supposed himself aggrieved by these provisions of that law; but it had not been suggested that he considered his rights infringed by being relieved from other duties. As he was instrumental in making this arrangement, as to the courts of that district, Mr. H. hoped he might be indulged in explaining the reasons which had induced him to think these provisions necessary, and as the law on the table went to their repeal, he should not be considered out of order. The State of North Carolina has an immense extent of seacoast. The chief seaports are Edenton, Newbern, and Wilmington. The first and the last are at the distance of two hundred miles the one from the other; Newbern about one hundred miles from each. The residence of the judge is the interior of the country, near two hundred miles from Wilmington, the place of most trade, and about one hundred miles from each of the other ports; the objects of the jurisdiction of the district courts are chiefly causes of admiralty and maritime jurisdiction. The court to be useful and convenient could only be made so by bringing the judge, at fixed periods of time, to the commercial points of his district. The difficulty of instituting a suit in the district court of North Carolina, and the inconvenience of attending it there, amounted nearly to a prohibition of the process of individuals; and, Mr. H. said, he knew demands had been relinquished and claims abandoned rather than encounter these obstacles. For these reasons the provisions on this subject were introduced into the last law, at his motion. And although much benefit may not yet have been experienced by the new arrangement, he had no doubt that great advantage would result therefrom eventually; he stated that he had been informed, at a late term of one of those courts, near thirty suits had been instituted. He was thus furnished with another reason against the bill on the table; for an amendment which should retain the benefit of these provisions of the last law was inhibited by the consideration that the imposition of duty would thereby be too great on the judge of that district, who will have the duties of the circuit court again imposed on him. Mr. H. had listened with great attention, and weighed with due deliberation all the arguments which had been offered on this important question; his conviction of the inexpediency and unconstitutionality of the proposed repeal was thereby enforced. When he found the best argument, the one most relied on by the advocates of the repeal, on the Constitutional point, was derived from a distinction, a fancied distinction—a distinction without a difference, between a removal of a judge from office and the taking away the

office from a judge; when it is acknowledged on all hands that we have no power to remove the judge from office; yet it is held that the thing may be effected by taking the office from the judge; he must be excused in declaring his belief that such arguments, analyze or examine them as you will, whether opposed by "boys" or contested by men, would alike be found to be but "shadows" indeed.

He considered the Judicial power of the United States as a vested power—a power vested in the judges constitutionally appointed; it is vested by the Constitution and cannot be taken away by law. It was vested by the people in the majesty of their power, and cannot be divested by any power inferior to that of the people in the exercise of their sovereignty.

The Constitution declares that "the Judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." The Constitution arranges the different branches of Government; to each department a distinct article is appropriated, vesting power and defining its limitation. By the first article the Legislative power is vested in the Congress of the United States, subject to a limited veto of the President. By the second article the Executive power is vested in the President of the United States; and the third article vests the Judicial power in the judges of the United States, who "shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." The three branches of Government are thus made distinct and independent of each other. By what authority is it that one or two departments can put down the third department? Where is it to be found? Is it found by construction? Then construction makes it as competent for the judge and the Legislature to declare they have the right to divest the President of the Executive power, as the Legislature or the Executive, or both, to declare they have the right to divest the judges of the Judicial power. To his mind it appeared clear and certain that no such right as the one claimed did exist.

The members of both branches of the Legislature and the President are periodically elected, and their continuance in office limited and defined by the Constitution; they depend on the people in the exercise of their elective franchise for their continuance in office. The judges, who are to hold their offices so long as they behave well, depend only on God and their own conduct for their continuance in office.

"The judges shall hold"—What? "Their offices," says the Constitution. How then can the assertion be sustained that the Constitution is not infringed, when that is taken from the judge which the Constitution declares the judges shall hold? Has not the taking the office from the judge precisely the same operation as the removal of the judge from office? Surely this will not be denied. Is not then the provision in the Constitution as certainly contravened by the one as the

other procedure? The framers of the Constitution appear to have been jealous, anxiously jealous, of an interference with the independence of the judges; not satisfied with guarding them from a direct removal from office, they endeavored to provide against indirect means whereby the removal might be effected, hence the provision which forbids a diminution of the salary of a judge. But, say gentlemen, compensation has a relation to services so intimate, that unless one is performed the other shall not be paid; that when the office is abolished, no service can be performed; consequently no compensation is demandable, and thus the difficulty is avoided. This, to be sure, is a most convenient kind of casuistry; an argument not expected to be heard in this House; subterfuges which could not fail to attach disgrace on individuals, surely must be unworthy of Government. To what does the argument amount? Does it amount to more than this? (asked Mr. H.) I engage a man for a stipulated sum to perform for me a certain service, and while, in pursuance of his contract, he is engaged in the work, in order to avoid the payment of the sum stipulated, I disable him from performing the service; would this be warrantable? could I justify it? Most unquestionably no. It is of the highest importance the judges should be independent; they are intended to stand between the Legislature and the Constitution, between the Government and the people; they are intended to check the Legislature. Should the Legislature even surmount the barrier of the Constitution, it is the duty of the judges to repel it back within the bounds which limit its power. Were they not independent, would they be equal to this duty? Could they perform it—dare they perform it, if on the Legislature they were dependent? But, it is said, with a Government of responsibilities like ours the uncontrollable power of the judges is incompatible. Sir, no such power is claimed for the judges; their office and duty is to prevent the exercise of unauthorized power; they are not without responsibility; they may be controlled; the Constitution provides the means. The tenure of their office is their good behaviour; when that ceases their term expires; and whether they behave well or ill, it is not for them, but the Legislature, to judge and decide. And here is the Constitutional check on the judges; this House may impeach, and the Senate evict from office a judge. If he behave ill, a judge may thus be removed, and the Legislature is restrained from an unwarrantable use of this power by its own responsibilities. Mr. H. declared himself without a doubt on the Constitutional point in question.

Much had been said concerning the manner in which the law proposed to be repealed had been passed. A gentleman from Virginia, (Mr. GILES), who had been up early in the debate, had taken occasion to mention by name certain Senators, and alleged that their votes carried this law. A recurrence to the Journals of that day would show the fact to be otherwise, unless the gentleman meant to suggest, that the votes of those Senators would have been the reverse of what they were

but for the prospect of their subsequent appointments. He would not suppose the gentleman intended this—it would be attaching on the characters of those Senators motives too corrupt for that gentleman to charge on others in their absence. The same gentleman, with great emphasis, has marked the time when the Presidential approbation of this law was announced to this House, the 13th day of February, when this House was engaged in the choice of President! And then the gentleman directs his attention to the circumstance of some of the members of this House being afterwards appointed to office. As to the time when this approbation was announced, whether combined or not with the circumstance of the subsequent appointments, Mr. H. declared his incapacity to discover what impression the gentleman thereby intended to make. He could not have supposed it had any influence on the passage of the bill, for that was a retrospective relation which could not exist. Did the gentleman mean to suggest it had, or was intended to have, any influence on the pending election? This was a suggestion unfounded. It was never understood, at least within his knowledge, that the late President directly or indirectly interfered with this House in the choice of his successor; nor did he ever hear that the late President espoused the cause of either the one or the other of the candidates for the suffrages of the States in this House; equally difficult is it to discover the relationship which the subsequent appointments bear to the subject of that election. Wherefore were those appointments mentioned? Did the gentleman mean to suggest that the members of this House, who were distinguished by the President in his subsequent nominations, were actuated by the prospect or promise of such appointments? He was unwilling to believe the gentleman did; such a suggestion would be unworthy any man who did not feel himself liable to be actuated by such motives; and should such suggestions be made, existing facts would not sustain it; the conduct of the members alluded to would prove it to be groundless, and the majority in this House on that occasion was too decided to countenance a belief that such means could be necessary.

Other members on this occasion and other occasions had undertaken to make their allusions, to express their insinuations on the subject of these appointments—discovering a disposition to ascribe improper motives to gentlemen on this floor. Mr. H. said, for his part, he was no motive monger, and although gentlemen differed from him in political sentiments, he was inclined to appreciate properly their views; they were as much entitled to suppose themselves correct as he was; and he was willing to believe that gentlemen generally were disposed to do right. He would, however, caution those members who are inclined to criminate, to be certain before they did so that the means of recrimination were not at hand. He might say, that inducements to put down the present judges, were to be found in the wishes of gentlemen to advance themselves, or to make places for their friends on the bench of the United

MARCH, 1802.

Judiciary System.

H. OF R.

States. He might say, that the proposed repeal had numerous advocates, because it was a measure which emanated from the Executive; because his smiles are courted; his favor hoped for; his power to grant appointments regarded. He might also say, that "if republicanism," as it is called, "did leave this House when the British Treaty came into it," that treaty had brought into this House many foes to the Constitution; for the energies of that Government, which enforces the payments of debts long withheld, are not likely to find friends or admirers among the coerced debtors; these things he might say.

He would not, however, make the charges, because it was possible they might not be well founded. He disdained such motives himself, and reprobated the practice of imputation too sincerely to pursue it.

Mr. H. would inform the other gentleman from Virginia, (Mr. RANDOLPH,) who had alluded to a gentleman from North Carolina on that floor as a commissioned judge, that the member alluded to never had such commission presented to him—of course he had never the opportunity to accept or reject it; he apprehended that it would be admitted that the acceptance of a commission was necessary to make an officer, and that member held his seat here by an authority equal to that by which the seat of any other member was held; the free suffrages of a large and respectable majority of the freemen of the district he represents is his authority. The gentleman from Virginia has certainly been greatly misinformed as to the member from North Carolina. If he alluded to the same member, when he assimilated certain characters as to their political tendencies to that of his Pensacola Hero, his informer had grossly deceived him. The fact or sentiment of an anti-revolutionary adherence to the enemies of his country never had attached, nor ever could attach, on the character of the member alluded to. The fact was directly the reverse; that member had not ceased to lament that his ability had not equalled his inclination to serve his country in her glorious contest for liberty and independence; during that time he was but a boy; the only one of his family who was able, did share in the toils, the perils, and the glory of the contest, and was found among those who gathered laurels at the springs of Eutaw.

The gentleman from Virginia was also mistaken as to the fortuitous circumstances relating to the salary of the district judge of North Carolina, at the last session. That was not a fortuitous occurrence; it was designed; that gentleman's friend from North Carolina was one of a committee appointed to report on the salaries of the officers; and, as Mr. H. had understood, opposed in the committee the measure of augmentation generally, and especially the increase of the salary of the North Carolina judge, and as to that judge prevailed in the committee. In the House, to the surprise of his co-members of the committee, the same member moved an amendment to their report whereby that judge's salary should be included among those which were to be increased;

the design was obvious; the circumstances being known, the amendment was rejected.

Mr. H. said the member alluded to lamented not that he possessed the good opinion of the late administrations; it was his pride to have been so distinguished. The suggestion was unfounded, which had been made by some, that favoritism was exemplified by the appointment of that member by the late President. The relationship of affinity or any consanguinity between the President or any part of his family and that member did not exist, he had not that honor; but he had filled an office before in the same department, under a commission conferred by the first President. To have been thus distinguished by the preceding Presidents, that member considered as highly honorable to himself. But it seems sufficient reason with some to excite their irritation and display their irascibility; the motives and feelings of that member are therefore to be assailed; the victim is to be sacrificed; and the means are disregarded by which the offering is to be made; the well turned period of pointed invective, the gross terms of mere vulgarity, the keen knife of the skilful surgeon, or the edgeless tool of the clumsy operator, are instruments alike acceptable. But he would take leave to say, that the character of that member is fortified by a barrier of integrity which defies the malice and machinations of his enemies; happily possessed of *mens conscia recta*, he disregards the imputations which have been made; thus shielded, the shafts of malice however directed, fall harmless at his feet, or are repelled with accumulated force on those who cast them. Mr. H. concluded with expressions of regret that he had exhausted any part of the time of the Committee in observations extraneous to the subject under consideration; but impelled as he had been he hoped to be excused; he would return to the question before the Committee, and close his remarks with one additional observation; that, believing as he did believe, the essence of civil liberty to be security, and that this blessing would only be insured to ourselves and to our posterity by the government of laws directly administered by upright and independent judges, it was his duty to withhold his support from any measure which might possibly contravene this all-important principle; he should therefore give his vote for striking out the first section of the bill on the table.

Mr. CUTLER.—Mr. Chairman: It is with great reluctance that I rise on this question, especially at this late period of the discussion. Unaccustomed to legislative debates, and conscious to myself that, on a subject which has already had so able and copious a discussion, it is not possible for me to say anything which is not familiar to every gentleman in this House, I should much have preferred giving my silent vote.

But, sir, viewing, as I do, the magnitude of this question, I feel it a duty which I owe to my constituents—a duty, sir, which I owe to myself, to state some of the reasons which have directed my judgment, and on which I have founded my opinion, in deciding on the bill before you. At the

H. OF R.

Judiciary System.

MARCH, 1802.

same time I feel it to be very unpleasant to solicit the attention of the Committee when I see the patience of gentlemen so much exhausted. I will detain them but a very short time.

In the pursuits of my life, sir, I have not been led to turn my attention very much to systems of jurisprudence, nor have I been conversant in courts of justice; but, on a subject as momentous as this which now occupies the attention, not only of this Committee but the nation at large, I believe it not necessary to be an adept in political science, in order to form a correct opinion.

Sir, I well recollect the time when the Constitution, which authorizes us to sit here, was under consideration in the State from which I came; and I am certain if the important feature of an independent Judiciary had not been clearly discovered in it, the adoption of it would not have been effected. Independent of what, sir? Of the overbearing power of the Executive and Legislative branches of the Government on the one hand, and of popular whim and caprice on the other. The people, generally, so far as my information extends, and myself among the rest, believed that our safety in life, property, liberty, and reputation, was secured by this all-important feature in a Government, emphatically introduced "to establish justice, to insure domestic tranquillity, and to secure the blessings of liberty." And I feel myself utterly incapable of comprehending what gentlemen mean, when they suppose we are safe under the administration of a Judiciary liable to be removed by the Legislative body any more than if they are liable to be removed by the Executive. If passion, or any improper motives, may induce the Executive to abuse such a power, may not passion, or improper motives, operate upon a Legislative body? And if I understand the import of responsibility, as attached to a man or men in public office, and producing the salutary effects of checking any of the imperfections incident to man, this same responsibility operates stronger upon an individual than upon a numerous body of men; and I must believe, because such is the irresistible conviction of my mind, that it would be safer to trust our Judiciary to be removed at the will of the Executive, chosen, as he is, once in four years, and solely responsible, than to the Legislative body, who, by dividing the blame, if any be imputable, will unavoidably reduce it to nothing.

Mr. Chairman, with these impressions upon my mind, and understanding, as I do, the words of the Constitution, I have not a doubt the independence of the Judiciary was intended to be secured, as much against the power of the Legislature as the Executive. If words are to convey ideas to plain men, not used to the subtleties of legal proceedings, which I must believe was the intention when this Constitution was composed, they can, in this case, convey but one idea. When plain men, of common sense, read this part of the first section of the second article, "the judges of both the supreme and inferior courts shall hold their offices during good behaviour," will not the irresistible impression be, that these words

were intended to give entire security to the judges so long as they behave well? That good behaviour should be their security against the encroachments of any power created by this instrument? And will not the impression be precisely the same when it is read by men of the strictest logical and grammatical correctness? If no crafty imposition upon the public mind was intended—if the true construction of an instrument, involving their dearest rights, was not concealed under implications and far-fetched deductions—if there was not an intention to deceive, can this plain sense of it be rejected?

But, sir, if the construction of the Constitution gentlemen contend for be correct, this article gives not the least security. If the Legislature can remove the office when they please, and of course the judges, can gentlemen show what security is given by this article? If it was intended to guard only against the power of the Executive, why was it not so expressed? The security is no more nor better than it would have been if the article had expressly said: "The judges of both the supreme and inferior courts shall hold their offices during the pleasure of the Legislature." If we depart from the plain letter, to make out a meaning by hard construction, we may give any sense to the Constitution we please. Here an insuperable objection arises in my mind to the constitutionality of this bill. Much ingenuity has been displayed in the course of this discussion, by gentlemen who advocate the bill, but the point on which the question of constitutionality principally bears, has been slightly passed over, or the plainest and most forcible arguments left unconfuted. The unsophisticated common sense of honest men, who have only common understanding, will compel them to believe the Legislature is not vested with power to remove judges at pleasure. If the Constitution does not place the Judiciary out of the reach of removal, as well by the repeal of the law establishing the courts, by which they act as judges, as in any other way, they hold their offices, not during good behaviour, but during the pleasure of the Legislature.

If the judges should misbehave, the Constitution has wisely authorized an impeachment, and a conviction involves in it a removal from office. In a very few words the wisdom and design of the Constitution is developed. We are not to suffer under the administration of bad men, because if their conduct is bad, they can be removed. Neither are we to suffer from a fear which the judges may feel of being crushed by the weight of Executive or Legislative power, nor from the sovereignty of the people operating in elections. "The fear of man bringeth a snare," and in no case can this fear do so much injury, as in the character and person of a judge. But I will not, Mr. Chairman, take up the time of the Committee in reiterating arguments which have been so clearly and forcibly impressed, at least, upon my mind, by the honorable gentlemen who have opposed this bill.

Sir, this Government has been emphatically styled a Government of checks and balances; it

MARCH, 1862.

Judiciary System.

H. OF R.

has been so understood by the people; and in this, more than in anything else, have they seen their own safety in the delegation of power. I believe it was the intention of the wise framers of the Constitution, that the Judiciary should form, not a "subordinate, but a co-ordinate, branch of the Government." By making the Judiciary, equally with the other branches, a component part, a check was formed, not less necessary to the security and freedom of the people, than any other contained in the Constitution. This check erects a barrier between the Government and the people, and becomes the bulwark of equal justice and equal liberty. It is the only effectual security against the encroachments of the Legislature upon the Constitutional rights of the people, and forming a wise and free Government, it will forever be a *desideratum* to establish, immoveably, an impartial, inflexible and sacred administration of justice. I was happy to hear the other day, an opinion which was in perfect unison with my own, so decidedly advanced by my honorable colleague, on the opposite side of the House (Mr. BACON.) He declared it was an opinion he had weighed in his own mind, and whatever conclusions might result, he should still adhere to it, that the judicial officers of every grade, from the judge of the Supreme Court of the United States down to the common justices of the peace, not only have a right, but are bound by their oaths of office, to judge of the constitutionality of the acts of Congress. And I should be still more happy to find the opinion of that gentleman according with my own, in opposing an act which is hostile to the very principle he so confidently advanced.

It has been, Mr. Chairman, repeatedly said, that this independence of the Judiciary would involve in it a destruction of the Legislature; that the independence contended for, would in its consequences erect the Judiciary into a despotism. But it has as often been answered, that the Judiciary commands no money—makes no laws—and this completely removes from my mind every apprehension of danger. Any power the Judiciary can assume over the Legislature is merely negative—it is of the preventive kind—it is only calculated to prevent injury and not to inflict it. The moment they attempt to inflict punishments, not authorized by law, an impeachment is an effectual remedy.

Sir, if the bill on your table passes into a law, I can see no obstacle to the passing another similar to the act repealed or varying from it, establishing the same or a greater number of judges. The next Congress may go on to do the same, and a perpetual fluctuation of your judges must be the inevitable consequence. If the Constitution was not meant, among other things, to guard against such an abuse of power, I cannot see for what purpose those words were introduced, showing the tenure of office in your judges to be solely that of good behaviour. If the words in the Constitution have not done it, I cannot discover the use of words, nor the benefit of intellect in giving them an explanation. I must subscribe to the opinion of the President of the United States, ex-

pressed on a late occasion, which I believe to be perfectly correct, that the true construction of the Constitution, is the "safe and honest meaning contemplated by the plain understanding of the people at the time of its adoption."

Mr. Chairman, before I sit down, I will make one or two remarks, on an observation I do not recollect to have been noticed, which fell from an honorable gentleman from North Carolina, whose political knowledge and talents I respect, and with whose candor I was much pleased. This gentleman (the honorable Speaker of the House) has said, and seems to rely much upon it, that all the evils which can possibly be apprehended from the passing of the bill, or any other improper act of the Legislature, may be cured by future elections. I cannot help doubting whether the gentleman has contemplated the full extent of this doctrine. It goes, in my opinion, wholly to set aside a written constitution. It is not in my power to conceive that elections are a remedy for every encroachment the Legislature may make on the Constitution. It must be a very uncertain corrective in instances of the most flagrant violations, and in smaller ones, it is none at all. There is not responsibility enough attached to the individual members of this House to render elections a sufficient corrective for the abuse of power. If the acts of the Legislature, which shall violate the most plain and positive provision of the Constitution, can only be corrected by an appeal to the opinion of the people, to be manifested by the exercise of their right of election, we lose the advantages we expect to derive from a written Constitution. And public opinion, which can never be accurately ascertained, and which is continually liable to fluctuation and change, will be our political constitution. If the time should come, which I hope has not yet arrived, when public opinion is to be the only corrective of the abuse of power, Constitutional rights will be reduced to a phantom, and the fair fabric of our national independence, liberty, and safety, will be levelled with the dust.

But, sir, I will not detain the Committee at this late period of the discussion, when it is not possible for me to add to the weight of argument and mass of information, which, in a manner so lucid and impressive, has been given to this House. I have thought it a duty thus far to state my own ideas on a subject which has excited much apprehension. The distinguished talents and information of gentlemen, who are of opinion that the passing this bill will be no infringement of the Constitution, command my respect. But when I find them leaving the plain words of the Constitution—the plain import of terms used without limitation, without being applied to any particular department—implying no more restraint upon the Executive than upon the Legislature, and undertaking to support their opinions on constructions and implications—when I find them denying that the Judiciary ought to be independent, I am forcibly led to the conclusion, that they are mistaken. And if the case is even doubtful, that the safest way is not to act at all. I had rather leave the laws in operation than hazard a breach of this inviolable

instrument. What evils may we not suffer, if we by repealing this law shall in event, be found to have broken the Constitution! They may extend beyond the power of calculation. It must be left to imagination alone to portray the picture which may be dreadfully realized.

What shall we suffer, sir, if, by doubting its constitutionality, we suspend the repeal to another session? I must confess to you, sir, my information is too limited to attempt a consideration of the expediency of the repeal. But so far as I can judge from the copious information given to the Committee, the expense, compared to the benefits which may arise from the present system, bears no proportion to them. I am as much disposed to promote economy as any gentleman on this floor, but economy becomes a public injury when it is not subservient to the public good. The saving expense alone, in this case, can afford little or no argument in favor of the repeal. From many parts of the Union, we find the courts, by the little experience already had, are in high estimation. I should therefore wait until further experience determine the propriety, or impropriety of a repeal. Diffident as I may feel of my own opinions on a subject like this, when called to vote under a sense of moral obligation, and the solemnity of an oath I have taken on this floor to support the Constitution, I must give a decided negative to the bill on your table.

MR. HOLLAND.—At this advanced period of the debate it would be improper for me to enter largely into the discussion of the present question, a regard for our time, a respect for the honorable gentlemen that have gone before me, and a respect to you, sir, forbid it. I shall, therefore, confine my remarks to the most prominent objections that have been made to the passage of the bill on your table.

The first objection to the passage of the bill is, the want of Constitutional power in the Legislature to pass it; and the second ground of objection is, that if the Legislature have the power, that it is improper to pass it at this time.

As to the first objection, it is laid down as a maxim, that the same power that can create can destroy, and that the power that gives has a right to take away that which is given. The first maxim relates to the Legislative, the second to the Executive power. But it is said, that these maxims do not apply to the present case. That the Legislative powers have been limited by the charter under which we legislate, and that the limitation extends to the present case. And it is also contended that the appointment of judges is not an Executive act, but the act of the people, and therefore they cannot be removed but by the people. If, upon examination, either of these assertions are true, I shall be ready to concede the point, and shall say at once that the bill ought not to pass, and will give it my veto.

As to the first maxim, I shall contend that if it holds good in any case, it ought to hold in legislation; legislation being a science so essential to the happiness of man, and so little understood, owing to the many obstructions that have been thrown

in the way by wicked and designing men, that it ought to be at liberty; the Legislative mind should be at liberty to reconsider its own acts, in order to benefit by experience. In the Executive and Judicial departments, the greatest part of their acts are mechanical; having no will of their own, they are obliged to execute the will of the nation; but even they have a right to correct their own errors. The Executive can dismiss from office persons that he has taken into service by mistake. The Judiciary can revise and reconsider their own judgments, reverse their own decrees, and correct their own errors. Indeed, this seems to be a common inherent right in all men, whether considered in a private or public capacity. And in all limitation to this rule the act may be properly said to be not the act of the agent but the act of the principal, the agent not being responsible for the result. But, with respect to the powers assigned to Congress, they are ample to all objects submitted to them, they are numerous and defined in the eighth section of the first article of the Constitution; there is not the smallest indication of a restriction where they have power to act, or had acted, except in the case of the compensation of the President and judges' salary, they are not to be diminished during their continuance in office. This does not restrict Legislative power over the institution under which the judges hold their office; if this restriction had been intended it would have been expressed in unequivocal words; words that would have applied to the office and not to the officer, such as that the judges shall hold their office during good behaviour, and the office shall not be abolished. This not having been said, I am unwilling to suppose that the framers of the Constitution intended to restrict Legislative power; that they intended to prevent them from having it in their power at all times to reconsider their own acts, and to put down useless, inconvenient or expensive institutions. I am unwilling to suppose that the convention intended to keep up the office for the sole use of the officer. That the office and the officer being created by the people in their Legislative and Executive capacity, the people in the same capacity can dispense with them, when, in their opinion, they are useless; a contrary construction would be an improper limitation of Legislative powers, and preclude the benefit of experience.

I shall now consider more particularly to whom the words, "and they shall hold their office during good behaviour," alluded to. By the eleventh section of the second article of the Constitution, "the President shall have power, by and with the advice of two-thirds of the Senate, to make treaties, to nominate and appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court," &c., and by the last clause the President has power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. From this section it is evident that the appointment to office is an Executive act, that the Senate, when advising, are in the exercise of Executive duties; the appointment

MARCH, 1802.

Judiciary System.

H. OF R.

is an Executive choice, it is an Executive gift to the person to whom the office is conferred, he has it not by purchase, he has given nothing in exchange, but holds it as a gift, and unless otherwise checked, at the will of the giver. Hence the framers of the Constitution thought proper to restrain the power of the giver, to wit, the Executive, by inserting the words before stated, "and he shall hold his office during good behaviour." If these words had not been inserted the judges would have held their offices by the same tenure as Ambassadors and other officers under his gift, subject to be removed by Executive pleasure. And I cannot but think, that the Convention had a reference to the tenure of the judges in Great Britain, and observing that the will of the Executive was there limited, they thought proper to make a similar restraint upon the will of the Executive in this country. This, sir, is the most correct opinion that I am able to form as to our having a Constitutional power to pass the bill on your table.

My colleague (Mr. HENDERSON) says, that the tenure under which the judges hold their offices in the State from which we come is the same with the tenure of the judges of the United States. He is correct; not only the judges, but all the justices of that State hold their offices by the same tenure, during good behaviour. But I think differently from him when he says he considers it not an Executive but a Legislative restriction. Soon after the formation of our Constitution, our Legislature passed laws organizing courts of justice, constituted of inferior and superior courts; the superior courts were held in districts by judges whose authority extended to the utmost limits of the State, and had unlimited jurisdiction; the inferior courts were holden by the justices of the respective counties, and had a limited jurisdiction with respect to officers, and unlimited as to civil actions, subject to an appeal to the superior court in all cases by the party who thought himself aggrieved.

Notwithstanding the Legislature at sundry times has attempted to change the Federal system both of the superior and county courts, an attempt was once made to repeal the law constituting the superior court, with an intent to vest superior power in the county courts; if this project had carried, the judges would have been put down; and, indeed, when this subject was on the tapis, I never once heard it suggested, that on account of the office of the judges, that the Legislature had not a power to make any arrangements they thought proper; indeed, it was said by members, that the repeal would answer one good purpose, if no other, that by it the State would get rid of one or two judges who were incapable of performing their duties; but so it happened that no substitute could be proposed that obtained a majority of the members, and no material change has been made. And I am pretty certain had the friends of the judges suggested that the Legislature had not a Constitutional power to repeal the law on account of the offices of the judges that it would have contributed to the repeal.

And with respect to the justices who hold their

offices by the same tenure as that of the judges, as before stated. The Legislature, for the more convenient administration of justice, have thought proper to divide a number of their counties; in some instances neither division retained its original name, as in the case of the county I live in, and the county adjacent, both of which were once known by the name of Tryon, after the British Governor who joined His Majesty's forces, which occasioned the Legislature, on the division, to name the counties after two American officers—Lynch and Rutherford. In this case the whole of the justices were out of commission, occasioned by a Legislative arrangement, and the Legislature did not feel themselves bound to re-commission said justices, their reappointment depended upon the opinion that was entertained of their merit. And in all this it never once occurred to the Legislature of North Carolina, that they had infringed the rights of office or violated the constitution of the State; and, of these transactions, I appeal to all my colleagues that hear me. And I further say that the late Judiciary bill, even before and since its passage, has been a subject of much conversation, and opinions freely given as to the propriety of its repeal, but in all that I have heard respecting it, the Legislative power of Congress never was called in question. I further say, that the objection is so new to me that I never heard of it until I came to this city; and after I found it insisted on by gentlemen, I have paid due attention to all the arguments that have been advanced by them, but to no purpose; my first opinion stands unshaken, and I think, with the former Legislatures of the State that I have the honor to represent, and with the present Legislature as announced by their resolution on your table, that the words, "that the judges shall hold their offices during good behaviour," are not a Legislative but an Executive restriction, and, under this impression, I feel at liberty to exercise my influence according to the wish of the Legislature of the State to repeal the act contemplated by the bill before you. And I am far from thinking with my colleague, (Mr. HENDERSON,) that the Legislature of that State stood in need of the arguments of this place to enable them to form a correct opinion as to the expediency or constitutionality of the repeal. With regard to the expediency, so far as relates to their State, they are the most competent on account of a complete representation of all the counties in all their remote or various situations must be fully understood. And with respect to the constitutionality of the repeal they would be at no loss, having the whole evidence before them—the act and the Constitution—this being all that was necessary to the forming of their judgment. I would ask my colleague first up, and the gentleman just sat down, if they think the multiplied arguments made use of on this occasion, have proselyted a single gentleman? I think it will be answered in the negative. I shall now proceed to make a few observations on the expediency of the passage of the bill, drawn principally from what comes within my own knowledge. I think I attended at two courts in the city of Ra-

H. OF R.

Judiciary System.

MARCH, 1802.

leigh; it was at the time of the sitting of the General Assembly of that State, in the year 1797-'98. I was in court in 1798, when his honor gave his charge to the grand jury; it principally consisted in an eulogium on the administration of the General Government, after which the court adjourned; and on the next day the court met, made up two or three issues, and, perhaps, tried a suit; and on the third day the court having nothing to do, adjourned until court in course. And I have understood that, in the other parts of the State, the business was conducted nearly in the same way. Indeed, I have understood that the Federal courts there had little to do. There was one case that came within my own knowledge; it was a suit that was brought against a poor man, on the other side of the Appalachian mountain, as a delinquent under the excise law, where the demand was about seventeen dollars; and, after the poor man had rode near two hundred and fifty miles once or twice, he paid the large sum of one hundred dollars cost, and came off clear. These circumstances, with the resolution of the State Legislature, is to me conclusive evidence that the original courts were adequate to all the business for which they were instituted in that State.

Having thus got over the objections relative to the want of power, and shown the expediency of passing the bill on your table, I shall take some notice of another objection that has been greatly insisted upon, namely, if we pass this bill we destroy the independence of our Judiciary. And if, on examination, it is found that, after this bill pass, our Judiciary will possess more independence, that they will stand further from the grasp of Legislative or Executive power than any other judiciary on earth, I hope gentlemen will concede to the passage of the bill. In looking at this subject it will be proper to take a view of the judiciary of Great Britain; that is admitted to be the best judiciary in the world, where independence and fidelity have been admitted to be the glory of the English nation.

The tenure of the judge's office there is during good behaviour, or, in other words, against the will of the Chief Executive Magistrate; subject to be removed by a joint address of both Houses of Parliament; and, in this case, the King has no discretion, the address is imperious. Here, by our construction, the judges cannot be removed so long as the Constitution, under which they hold their offices, exists. To repeal this institution there must be not only a majority of both branches of the Legislature, but the consent and approbation of the Executive are necessary, or otherwise a Constitutional majority of both Houses. A gentleman from Connecticut, (Mr. GODDARD,) has said that he has no apprehension of an abuse of power in England; that it is not reasonable to suppose that Parliament would make an improper address for the removal of their judges; for that the Parliament consisted of a democratic and an aristocratical branch that would remain firm against any improper impulse; but that he apprehends that there is not the same security in this country. As the gentleman has not given a rea-

son for his apprehensions, it is but fair to presume that he has a higher confidence in the British House of Commons and Lords of Parliament than he has in the American Senate and House of Representatives, with the further additional security of the Executive of the United States.

A gentleman from Pennsylvania (Mr. HEMPHILL) asked, what could induce the framers of the Constitution to leave it in the power of the Legislature to let their judges drop by repealing the law by which they held their commissions? I will answer that honorable gentleman by asking him what induced the convention that formed the constitution of his State, to put it in the power of the Legislature to remove their judges by a joint address of two-thirds of the Legislature to the Executive of that State? The motives that governed in the one case probably governed in the other, and I will submit to the opinion of the gentleman whether the removal by address is not easier effected than by repealing the institution under which the judges acted; the vote of the Governor being equal to one-third of the Legislature, equal to the Constitutional vote of the President of the United States? A gentleman from South Carolina (Mr. RUTGEGE) says, that if we pass this bill we not only destroy the independence of the Judiciary, but that we voluntarily stab the Constitution in the most mortal part. To both charges, I say not guilty. But to prove the truth of the charges, he introduced the outlawry of Wilkes, in England, and stated that the judges had fortitude, fidelity, and independence sufficient, and reversed the outlawry. This case proves the reverse of the position intended; it proves that although the judges in England held their offices by the courtesy of Parliament, yet they had integrity and independence equal to the discharge of their duties, from which it must be inferred that our judges, not holding their offices at the will of the Legislature, are more independent and more capable of discharging their duties.

And, as a further proof of our destroying the independence of the Judiciary, and stabbing the Constitution, the same gentleman informed us that by this means all Republics had been destroyed; that Greece had fell, Rome had fell, and that Venice, and the Republic of Switzerland, had fallen. I expected that the honorable member was about to show that those Republics had fallen because they had written constitutions, vesting certain powers in their Judiciary, and that the Legislative branches of those Governments had destroyed their independence. The honorable gentleman says that we are the enemies of the Constitution, and that he and his honorable friends would do anything to save it. The manner that those gentlemen formerly and at this time have portrayed the Constitution, puts me in mind of Achilles the Grecian chief: the Constitution, like this hero, at some times was invulnerable; it was adequate to every purpose; it was broad, and extended its force against all opposition, like the hero it nursed, and levelled armies, and now, like him, the only mortal part that the shaft of death can enter is at the heel. It is in the minor branch of

MARCH, 1802.

Judiciary System.

H. OF R.

the Executive, the Judiciary, and in the minor branch of that branch, the sixteen judges.

A gentleman from Pennsylvania, and my colleague from North Carolina, has compared this tenure of the judges to a contract, and says that the same rule of justice should be applied to them as to individual contracts. I am not disposed to contest this point. And what is the rule upon contracts where work and labor is to be done? Suppose a firm of merchants employs a clerk to act as a clerk in their firm during good behaviour, for which services said clerk had a covenant with said firm by agreeing for a monthly payment of a sum not to be diminished during good behaviour? Is the contract binding upon the firm, so that they cannot dissolve it? Suppose said firm dissolves, what becomes of the contract? Can the agent maintain an action in law or equity for the recovery of moneys for services which he never did perform, or for services not wanted? I believe not, sir; and the principle holds good in all contracts where services are to be rendered. If anything occurs that renders the services unnecessary or improper, the contract is concluded, it is at an end, a contrary principle would lead to many absurdities. A gentleman from Connecticut has said that the words "during good behaviour" are so plain and easily understood, that a school-boy would, without hesitation, answer that it meant so long as he behaved well, that it meant during life, and would not a school-boy also answer that no person should be continued in service longer than his services were wanted, and that as soon as the services could be dispensed with that the person performing services should be discharged, and, after the discharge, would not the school-boy say that the payment should stop? The gentleman has said we may not commit murder by running our sword through a man, but may push a man against a sword. Is there any similarity in this case, in discontinuing a man from service whose services are not wanted, in discontinuing an office that is unnecessary to be kept up, and even expensive and injurious to the community, and that of taking the life of a citizen? I must confess I see none. One being an act arising from just impressions of duty, the other an act of high criminality. The same gentleman has said that we ought to be cautious in passing laws by constructive right on the Constitution. This caution comes with a bad grace from that quarter. Has the honorable gentleman forgot the law passed by his support, where by a construction of guarding against the licentiousness of the press, they passed the Sedition act, contrary to the express words of the Constitution? These things are of so recent a date that they cannot be forgotten. We have been too long amused by sound, by declarations from that side of the House, but it is now too late for declarations to obtain credit, when contrary to experience. We have been told by a gentleman from Delaware that he wishes to support the sovereignty and dignity of the United States, and at the next breath he tells us and tells the world, that he has no confidence in the majority of the Legislature, and that he has no confi-

dence in the Executive. Is this the means that he employs to support the dignity of the United States? He has also said that the assumption of the State debts was necessary for the remuneration of the war-worn soldiers; these were the declarations by which this measure was carried. But my friends in the opposition then declared that it would not have that effect, that, on the contrary, the soldiers that had performed the services, and that the citizen that had advanced his property for the public service, would not be remunerated, but that the whole would be cast into the hands of a few speculators, and that the public debt would be greatly augmented. And has not all this been realized to a greater extent than was even apprehended by my friends? The same gentleman has said, with one other gentleman from Maryland, that the war in Europe, and the extent of the French arms, made it necessary to augment and raise the additional army, or to put it in the power of the President to do so. My friends then thought, as they still think, that the French, whatever intentions of hostility they bore to this country, would not invade it; that they were so encompassed by the Powers of Europe, the thing was impossible. To these reasonings my friends received in reply, that they were Jacobins, Democrats, French partisans; then was the time of political intolerance. But, having carried the army, more was necessary, the opposition must not talk, or at least they must not write about it, unless they had always legal evidence in their pocket: to justify the Sedition law, it was necessary to put down free inquiry; and, after all this, we are still told all has been well conducted; and we are further threatened with civil war, if we strike down this institution, and recommended to take care of our wives and children. We are threatened with the bayonet. Are these gentlemen prepared, like their famous leader and author of the funding system at New York, to shed their hearts' blood in the opposition? I trust they are not prepared—they have no army of dependants to second them in a design of that kind. The good sense of America has at length seen their projects, and cannot longer be imposed upon by them.

A gentleman from Maryland (Mr. DENNIS) begins his remarks by giving us the homage of his esteem. I would ask the gentleman, is this an indication of approbation or contempt? He dwells much on the name of General WASHINGTON, and says that no monuments are building for him. I cannot conceive any relation that this has to the present question. And he says that Mr. Hamilton, although he was the author of the funding system, did not consider a national debt as a national blessing, and, to prove it, reads a long report of Secretary Hamilton to Congress.

It is true, in this report, there is no express avowal of an opinion that a national debt would be a national blessing; nor is it reasonable to believe that this avowal would accompany an official report. But we are to judge of the intentions of men by their actions, more than by their declarations—the actions on many measures adopted by Government lead to the proof—and I think I

H. OF R.

Judiciary System.

MARCH, 1802.

have seen a publication, (as publications have been admitted as evidence by gentlemen on the other side)—which publication has been ever considered as the production of that gentleman—which went to prove that a national debt was a national blessing. The doctrine has been so well understood in theory and practice, that I had thought the principle had been settled. The gentleman says that it was impossible to do justice in the funding system; this would be a good argument not to have touched it.

He says at the time the additional army was raised France had forty thousand troops, and had nothing to do, and she might have bent her course this way. If this was true, France has one hundred and fifty thousand troops at present, and less to do; we therefore ought to be raising armies.

He says our navy protected our trade. It may be so, but was there a necessity to build the six ships-of-the-line, that could not in any short time be brought into action, at a time when we had to borrow money at eight per cent.? He says, our side of the House never wished to pay the public debt. This I deny; my friends never wished unnecessarily to augment the public debt by creating and keeping up useless institutions. But they at all times, when a debt has been created, although ever so improperly, have wished to extinguish it by actual payment; to prove this, examine the records and journals of Congress, and the votes will be there seen. The gentleman has said much about our destroying the independence of the Judiciary, and attempting to violate the Constitution, in common with other gentlemen on that side of the House, equally unjust and defamatory, for which no apology can be given unless it be admitted to be the last convulsions of an expiring party. Sir, as I am fully convinced that we have a Constitutional right to pass the bill on your table, and as I do believe that it is expedient to pass it, and as I further believe that it does not violate the independence of the Judiciary; that if they have a right to judge of the constitutionality of law, they will continue unimpaired to have the same right, and in every respect remain in their Constitutional independence, I shall therefore vote against the proposition of my colleague for striking out the first section of the bill.

Mr. GREGG.—Several days ago, Mr. Chairman, I expressed an anxious wish that this question might be decided, and assigned as a reason for my anxiety, the length of time it had already occupied, and the belief I entertained, that if the discussion was continued any longer, it must be by the repetition of arguments we had already heard, and by introducing extraneous matter, which very probably had better be kept out of view. I confess that I have heard nothing since to convince me, that the opinion I had then formed was incorrect. It is true, the argument has been conducted with great ingenuity and address on both sides, but it must be acknowledged, that there has been much repetition, and many subjects brought into view, which, as they have very little bearing on the present question, had certainly better been left untouched.

It has appeared to me, that a stranger coming into the House at some periods of the debate, would at once have concluded the subject of discussion to be, whether the measures of the Government during the Administration preceding the present, tended to monarchy or aristocracy? At other times he would have apprehended the question to be, whether the common law attaches to the Constitution of the United States, and forms a part of it? From the course of the arguments at other times, he would be inevitably led to conclude, that the main question to be decided was, how far the courts have a Constitutional right and power to declare laws passed by Congress unconstitutional and void. These, to be sure, are interesting and important subjects, and we have had much useful information to aid us in forming an opinion, should we even be called to decide on them, but they appear to me so entirely irrelevant to the subject immediately before the Committee, that I have regretted to hear them, thus incidentally drawn into the present discussion. Entertaining the opinion which I before expressed, and which I have now repeated, of the exhausted state of the subject, it would certainly be improper in me to detain the Committee by entering minutely into the argument. I assure the Committee I have no such intention. My principal object in rising is to correct some information with which a gentleman from South Carolina (Mr. RUTLEDGE) favored the Committee a few days ago, respecting an official character in Pennsylvania, the State from which I have the honor to come, as one of its Representatives. I would have done this at the time the information was given, had I not been prevented by the reluctance I always have felt at seeing a gentleman interrupted in his observations. Had it been done, then, the gentleman from Maryland (Mr. DENNIS) would perhaps have spared the allusion made by him to the same person on Saturday.

A gentleman from Virginia, in speaking on the subject of appointments to office, mentioned that a person, not only hostile to our independence during the Revolutionary war, but who had even joined the British army, and distinguished himself as an active partisan in their service, had been appointed to the important office of a judge, by the late President. The gentleman from South Carolina, in searching for an officer under the present Administration, supposed to have been possessed of similar principles, during that interesting period in the affairs of this country, as a set-off to the appointment of the judge, travelled into Pennsylvania, and fixed on the collector of the internal revenue for the city and county of Philadelphia, in that State. He informed the Committee, that when the British army under Sir William Howe, made its triumphal entry into Philadelphia, that person was its conductor; that in manifestations of his joy on the occasion, he rode before with his head wreathed with laurel, and that he was afterwards proscribed for his conduct by an act of the Legislature of the State. That the person alluded to, with many others, did precede the British army when it marched into Phil-

MARCH, 1802.

Judiciary System.

H. OF R.

adelphia, exhibiting evident demonstrations of joy, I believe has never been contradicted. That he was proscribed by an act of the Legislature, I believe is equally certain. But I never until now heard, that he was the conductor of the army on that occasion. I have always heard him spoken of as being too young to be entrusted with so important a commission. His youth, and his being under the direction of friends, who, on that occasion, were supposed to have exercised a controlling power over him, pleaded so powerfully in his favor, that this political transgression was forgiven by his country, and the proscription revoked. I wish the gentleman had proceeded with the history of this person. It would then have appeared to the Committee, that the war had not long terminated before he was brought into public notice, and placed on the theatre of public life, by that very description of people who now arrogate to themselves the appellation of Federalists. It would also have appeared, that shortly after the establishment of the present Government, he was appointed Assistant Secretary of the Treasury by General WASHINGTON, then President, and that when that office was abolished, he was appointed to be Commissioner of the Revenue by General Washington also. Yes, sir, he was appointed to both these important offices by General WASHINGTON. This consideration alone, it might have been supposed, would, in the opinion of gentlemen, have been sufficient to justify the present President in giving him the appointment he now holds, had it been given by him; but it is a subordinate office he holds; it does not come under the immediate notice of the President; it is within the gift of the Supervisor of the District.

Here, Mr. Chairman, I must beg leave to observe, and I think it will not be improper in this place to take some notice of the clamor that has been excited, and the charges that have been made against the President for removing the late Supervisor of that district, and appointing as his successor the person who now holds the office. I have before me a newspaper containing a number of toasts given at an entertainment, on a late memorable occasion in this city, in one of which the injury done the late Supervisor is represented to be so great as to warrant a kind of appeal to the people for obtaining him redress. I have seen, in another newspaper, (and newspaper information is become very fashionable on this occasion,) a paragraph in these words: "General Miller, the accomplished, the war-worn soldier, has been removed from the office of Supervisor of the District of Pennsylvania, to make room for one Muhlenberg, a Dutchman." Now, sir, what must have been the object of the author? Most undoubtedly to impress the minds of strangers with a belief that the former was a man of distinguished merit, and the latter, the reverse. In this, as in other cases, it is fair and proper that the whole truth should be declared. It is not pretended to be denied, that the late Supervisor is a man of merit. It would ill become any person at the present day to attempt to divest him, or any of the brave men to whose exertions our country is in-

debted for its independence, of the honors justly acquired by their services during the Revolutionary war. That gentleman entered into the Army very early in the war, and continued in service until 1779 or 1780. He then retired, and was shortly after appointed to a lucrative civil office under the State, which he held till 1794, at which time, I believe, he was made Supervisor of the District.

Let us now, said Mr. G., inquire what are the pretensions of his successor in office. His military career also commenced with the Revolution, nor did he lay down his sword until, at the conclusion of the war, the Army was disbanded. The importance of his services through that whole period I have never heard questioned. If, therefore, being war-worn constitutes any just demand on the Government for official remuneration, (and I must declare I have always viewed it in that light,) the person who now holds the office has a superior claim, as having been longer in service than his predecessor, and because, in the last years of the war particularly, the pay of the officers could not be considered an adequate compensation for their services.

Permit me, sir, whilst I am on the floor, to advert for a moment to an address from the bar of Philadelphia to the Senate, on this subject, to which frequent allusion has been had, and on which great stress is laid in this discussion. As the address is not before the House, I much question whether arguments drawn from it are strictly in order. But if it even was on your table, I would ask what influence should it have on the decision of the present question? The respectability of the bar of Philadelphia is acknowledged to be very great. It is composed of men as eminent for their professional abilities as they are distinguished for personal merit. I feel no disposition to detract from their reputation in either of these respects, even was it in my power. But, sir, it is well known to every person living in Pennsylvania, that the lawyers of the whole State, with few exceptions, whatever their professional abilities and personal merit may be, have uniformly been advocates of that system of politics, and all those measures which distinguished the former administration of our Government. The public debt, a large Army, an increased Navy, and the whole catalogue of taxes, received their countenance and support, as contributing to the extension of Executive influence and power. Surely, then, it cannot be accounted strange—nay, is it not to be expected, that these men should rally round the Judiciary, and endeavor, by adding to its influence, to compensate for their loss of power in the proposed reduction of some of the other establishments?

With respect to the address itself, it may be observed, that it cautiously avoids giving any opinion on the Constitutional power of Congress to pass the bill on the table, and confines itself to a simple statement of the expediency of the present organization of the courts, as ascertained by the practice of the gentlemen who have signed it. Even as to the expediency of the system, I have

been informed that they were not unanimous, and that a few, not inferior in talents, absolutely refused signing. Had it touched the Constitutional question, or contained even an implied doubt of the Constitutional power of Congress to repeal the laws to which it alluded, I feel myself warranted in saying, that some at least whose names are now in it, would have refused their signatures. Indeed, I am inclined to think, that a regard for consistency would prevent them, generally, from giving their sanction to any instrument embracing that principle, and this opinion I conceive will appear to be sufficiently warranted by this consideration.

In the State of Pennsylvania the judges hold their commissions by the same tenure by which the judges of the United States hold theirs. During good behaviour are the terms used in both constitutions. The Judiciary system, in Pennsylvania, has been long thought to be imperfect and defective. An attempt is now making to improve it. I have this morning seen a bill on the subject, which, I understand, is likely to pass in the House of Representatives. I believe that bill is supported by all the professional gentlemen who are members of the House. I have not heard that any of those who are not members are protesting against it as being unconstitutional; and yet it goes to abolish the offices, and of course to put down more than a hundred judges, who are all commissioned during good behaviour. If these gentlemen believed that measure to be unconstitutional, their patriotism surely would lead them to protest against it, and to exert their influence to prevent its passage. This, sir, it appears to me, may be considered as pretty conclusive evidence, that it is a received opinion in that State, not objected to even by professional gentlemen, that it is competent to the Legislature to abolish an office, which on experience is found to be inexpedient and unnecessary, even although the officer holding it is commissioned during good behaviour; and this is conformable to the opinion of the chief executive Magistrate of that State, expressed with reference to this particular subject, in a letter to a friend, which has been already stated by a gentleman from Georgia. Unless the Legislature does possess this power, or if the doctrine of the independence of the Judiciary should prevail to the extent that has been contended for, it appears to me, that what I have always considered as the most important principle of the Constitution, is destroyed. Responsibility in public agents I have always considered as the best, the only security the people have against imposition. While that is preserved, they are in great danger; destroy it, and where is their security? If the judges even of inferior courts are to be so independent, as that their offices must be sacred, and beyond the reach of the Legislature, and if their power in deciding on the constitutionality of laws, is to be unlimited, and without any qualification, the Legislature is but a subordinate branch of the Government—the Judiciary is paramount—the supreme power is in their hands. Such a doctrine appears to me repugnant to common sense, to the vital princi-

ples of our Government, and to the plain and obvious meaning of the Constitution.

I must, Mr. Chairman, take this opportunity of expressing the regret with which I have heard during the present discussion, the friends of this bill branded with epithets and loaded with charges, which, to say no worse of them, are certainly highly improper in this place. They have been charged with being actuated by motives hostile to the Constitution and Government of their country. They have been represented as being led on by a principle of innovation, and a destructive spirit, which after deluging Europe in blood, is now exerting its baneful influence over them. They have been called tools of the President, mere automaton, prepared to execute all his mandates. They have been held up as disorganizers, jacobins, and infidels—and all this is done under the privilege of freedom of debate. This, sir, is not freedom of debate. It is a gross abuse of that privilege. It is licentiousness of debate, and if continued to be practised, its inevitable consequence will be, to sink the reputation of this House in the estimation of every wise and good man. I have lamented exceedingly, that any gentleman on this side of the House could have thought himself justifiable in descending to make any reply to such insinuations.

I was, Mr. Chairman, a member of Congress at the time the system was adopted, which it is the object of the present bill to repeal. I was then opposed to it. I did not think so extensive an organization of the courts necessary. The expense created by it I considered a serious evil. The courts, under the old system, I believed to be competent to the discharge of all the business which would be likely to come under their cognizance for a long time. The document which has been laid before us by the President, containing a list of all the causes which have been entered, and which yet remain undecided in the courts of the United States, has fully confirmed me that I was not mistaken in that opinion. The number therein stated even falls short of what I supposed it might be. Believing, therefore, the present system to be unnecessarily extensive, viewing its expense as oppressive, seeing no article or section in the Constitution, which, either in its plain letter or by any fair construction, prohibits to the Legislature the power of repealing it, and considering the doctrine of the independence of the Judiciary in the extent contended for, as not only incompatible with, but as repugnant to the vital principle of the Constitution, I shall give my decided vote in favor of the bill, and against the present motion for striking out the first section.

Mr. HASTINGS.—I rise to express my sentiments upon the bill now under consideration of the Committee—not that I expect to add many new reasons against the principles of the bill to those that have already been offered by gentlemen who have preceded me in the discussion; but when the Constitution of our country, the ark of our political safety, is in danger; when, in my apprehension, it is threatened with a blow that may prove fatal to its existence; when we con-

MARCH, 1802.

Judiciary System.

H. OF R.

template that a dissolution of the Union may be the final result, our fears are excited, the imagination is alarmed, and every exertion ought to be made to avert the impending evil.

Under our present Constitution of Government (which I believe to be the best and most perfect in the world) the American people have been happy beyond all former example, and whether our national prosperity and union shall be preserved or destroyed, depends alone upon ourselves, upon the preservation of the existing Constitution.

The subject now under consideration of the Committee involves in it an important Constitutional question: Shall the independence of our Federal Judiciary be impaired or destroyed? shall it be maintained in that state of inviolability in which the people, the creators of the Constitution, placed it, or shall the independence of this important branch of our Government be prostrated at the feet of the National Legislature?

I have always believed, that for a Government to be free, it must have three separate, distinct, and, as far as possible, independent branches—the Legislative, Executive, and Judicial; that these three branches, though co-operating with, ought mutually to be checks upon each other, and that whenever one of those branches assumes the powers constitutionally belonging to the other, there is an end to the freedom and security of that Government; and I have uniformly believed that it was the sense of the American people, that the powers of their Government should be thus arranged and distributed. It is possible that a Legislature may sometimes be under the influence of popular passions, and that the Executive may not be wholly free from them; to gratify popular clamor, laws may be enacted unconstitutional and oppressive. What power, then, to check the Legislature in their wild career, but an upright and firm Judiciary, that is not dependent upon popular will? Judges who are independent, holding their offices during good behaviour, and who, uninfluenced by popular or party views, will operate as a check upon those, who, in factious times, may attempt to break down the barriers of the Constitution, and by the exercise of this Constitutional power, preserve the liberty, freedom, and independence of their Government and country?

I believe it is often true that there is a strong disposition in Legislative bodies to encroach upon the other branches of the Government, because perhaps they are generally the weaker branches. If we turn our attention to England, we shall discover this spirit displayed in the conduct of the British Parliament during the reign of the elder Charles. He was an arbitrary Prince; he levied money from his subjects without the consent of Parliament, and against law. The Parliament resisted his claims, and he surrendered them; but the Parliament was not satisfied with reducing the royal prerogative within reasonable and Constitutional bounds. They stripped the King of all his Executive powers, and then sent him to the scaffold. The Parliament then assumed and exercised all the Legislative and Executive powers of the Government. Confusion ensued, and order

was not restored until Oliver Cromwell, with military force, and without the consent of the people, forcibly seized upon the Government.

If we look to France, we may there behold the same encroaching spirit, which discovered itself and prevailed in the National Convention. The Executive of the nation, deprived of all his powers and prerogatives, which were usurped and exercised by the Convention, who tried, condemned, and doomed the King to the guillotine. The same Convention, afterwards exercising all the powers of Government, detached judges and commissioners from their own body into every part of the country to inflict revolutionary vengeance upon the suspected enemies of the Revolution; and thousands suffered under the arbitrary decrees and sentences of those revolutionary judges. I hope, sir, that the same encroaching spirit upon the Constitutional independence of our national Judiciary has not entered this House; but what has happened once may happen again. The opinion and practice in those States that have provided by their constitutions of government that the judges shall hold their offices during good behaviour, (which is the case, I believe, with nine or ten States in the Union,) must be a good rule by which to ascertain the understanding of the people respecting this tenure of office. In Massachusetts the judges hold their offices during good behaviour. In that State, I apprehend, the people never supposed that their judges were liable to be removed from office but for misbehaviour; and I have believed this to have been the prevailing opinion in all the other States where good behaviour is the tenure of the judge's office. Upon this point I cannot entertain a doubt; the meaning of the words in our national Constitution, "that the judges of both the supreme and inferior courts shall hold their offices during good behaviour," is clear, precise, certain, and free from all ambiguity; it requires no nice metaphysical investigation or distinctions to ascertain their true intent and meaning. But to be a little more particular upon this point, the Judicial power is one of three separate branches of our Government; and it is as essential to the happiness and security of the people that the independence of this branch of their Government should be preserved as entire as the other two branches. The American people have declared, in their Constitution, that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Here the word *shall* applies as well to the inferior courts as to the Supreme Court; and is as imperative to the one court as to the other court. I apprehend the true meaning to be this, that there *shall* be a Supreme Court, and there *shall* be inferior courts, both of which *shall* be ordained and established by Congress: the Constitutional injunction upon Congress to establish courts being as strong and direct in the one case as in the other; and the Constitution contemplates the constituting of courts inferior to the Supreme Court, having appellate jurisdiction. Then follows another part of the sec-

tion, "the judges of both the supreme and inferior courts shall hold their offices during good behaviour." Here the expression that "the judges of both the supreme and inferior courts shall hold their offices during good behaviour," is as imperative as the former part of the section, that the judicial power *shall* be vested in a Supreme Court &c. If it is a Constitutional command upon the Legislature that they *shall* ordain and establish a Supreme Court, and also inferior courts, the command is as positive that the judges of both the courts *shall* hold their offices during good behaviour; now the advocates for the repeal of the law constituting and establishing the present circuit courts, say that the Supreme Court being a Constitutional court, cannot be affected by the Legislature; but I see no reason why you cannot as easily get rid of the judges of your Supreme Court, by repealing the law organizing that court, as you can remove the judges of your circuit courts by repealing the law that establishes those courts; the principle and process is the same; for both courts equally depend upon a Legislative act to constitute and ordain them; and if the principle is once adopted, why not remove your President from office? For can there be a President constitutionally elected but by the intervention of the Legislature? You make a law determining the time of choosing the electors of President and Vice President, and the day on which the electors shall give their votes. You ordain and establish courts by law. The President is one Constitutional branch of the Government; the judges also are another Constitutional branch of the Government. The President shall hold his office during the term of four years; the judges shall hold their offices during good behaviour. If, by repealing the law constituting the court, you can displace your judges, why not also, by a cunning decree, remove the President by repealing the law determining the time for choosing the electors of President? Convinced, therefore, from the best attention I have been able to give the subject, that if the bill before the Committee is finally passed, it will be an infraction of the Constitution, I shall only add, that two or three reasons alone are satisfactory to my mind, why (if it were Constitutional) it still would be inexpedient to abolish the present system of circuit courts, and restore the old one. First, under the old system the manifest impropriety and absurdity of a judge's sitting and deciding causes in an inferior court, and upon an appeal from his decision to the Supreme Court, the same judge sitting and deciding upon the same cause in that court. Secondly, the great inconvenience and difficulty that the judges of your Supreme Court, under the old system, were subjected to, being obliged to travel from one end of the United States to the other to hold circuit courts; their long absence from their families and studies; the failure of holding courts, prevented by sickness and a variety of accidents; and the great expense to suitors consequent thereon. By the present system these evils and defects so much complained of under the old system are remedied.

But, in the course of the discussion, another doctrine has been advanced by the advocates for the bill, in my opinion dangerous to the rights and liberties of the people, and wholly destructive of the Judiciary; I mean, that the Judiciary is no check upon the Legislature; that the Legislature expresses the public will; that the public will, thus expressed, is to be carried into effect by the Judiciary, however the law may be in direct violation of the Constitution; and we are told by an honorable member of the Committee, that, if we pass this bill, and thereby violate the Constitution, it will only be for two years; in two years the people may send other Representatives, and restore the law; and this, it is said, is the corrective principle in the Constitution. But if this doctrine be true, if the Judiciary power has no Constitutional check upon the acts and doings of the Legislature, Congress may pass an *ex post facto* law by which I may be deprived of my estate or life, before this correcting principle can operate and have effect. We are also told that, by abolishing the present circuit courts, we shall get rid of the expense of supporting sixteen circuit judges, an expense to the United States of about thirty thousand dollars a year; but I ask, what is this expense, which one of the advocates for the repeal has said is paltry, compared to the advantages of a more prompt administration of justice than was the case under the old system? Gentlemen may talk about saving expense; I am disposed to go as far as they will, in saving the public money in every proper way; but I never can consent to abolish expense, at the expense of the Constitution. It is said, also, that the business in the circuit courts has diminished, and this is urged as another reason for abolishing these courts; it appears that sixteen hundred and thirty-five suits were depending in the six circuit courts; this number will average about two hundred and seventy-two suits to each of the courts; this shows pretty conclusively, that there is business sufficient for those courts to do; and the less business the less delay, and the more prompt will be the administration of justice; besides, is not this country rapidly increasing in population and wealth? Contrary to all experience, therefore, are we to conclude that litigation and suits will decrease in a ratio with the increase of our population and wealth?

Mr. Chairman, an honorable member from Virginia has told us that the judges have claimed powers, which, I understand that gentleman to mean, do not belong to them; and he says, that it was the State of Massachusetts which was first attempted to be brought to the feet of Judicial policy; I would ask that, when the judges found, by the Constitution, that a State was liable to be sued, and therefore sustained the action of an individual against the State, if this was an unconstitutional usurpation of power? And are the judges for this to be censured and charged with claiming power, which did not Constitutionally belong to them to exercise? Upon the principles of justice, I apprehend, no sufficient reason can be given, why a State should not be as compellable to pay her debts, as an individual; or is jus-

MARCH, 1802.

Judiciary System.

H. OF R.

tice and moral obligation different, as applied to a State or an individual?

The same honorable gentleman has said, that we may now indulge the hope, that our pulpits will not much longer be converted into political forums. How this may be in Virginia I know not; but, sir, as it respects the clergy in New England, it is not true; we are blessed there with a learned, pious, and patriotic clergy; who, from their good conduct, have acquired, and deservedly possess, the confidence of the people; a clergy, sir, that, during the Revolutionary war, were the zealous supporters of the rights and liberties of their invaded country; a clergy that, by their influence in their parishes, by animating and encouraging the people, in the most gloomy periods of that war, to persevere in the prosecution of it, were as useful, almost, as an army in the field; and who made as great sacrifices in the common cause, by receiving their small salaries in a depreciated paper currency, as any other class of people in the country. Our clergy, too, like our judges, hold neither the sword nor the purse; like our federal judges, too, their tenure of office is, certainly, during good behaviour; for misbehaviour only can they be removed from office. Our clergy are the advocates of civil and religious liberty; they are the friends and patrons of order and good government. We consider them, in New England, to be a useful and invaluable class of citizens; we wish not to part with them, nor to have their respectability and worth lessened by groundless calumny or outrageous abuse.

Mr. Chairman, an honorable member from Maryland has given the Committee a long dissertation upon common law, and read a number of passages from Judge Blackstone's Commentaries, with a view, I conceive, to convince the Committee that our federal courts have no Constitutional right to use and exercise common law powers; if the gentleman had turned his attention to the 67th and 68th pages of the first volume of the same author, I think his difficulties and doubts, upon this subject, must have been, in a great measure, removed. That correct writer there, treating of the common law of England, says:

"This unwritten or common law is properly distinguished into three kinds:

"1. General customs, which are the universal rule of the whole Kingdom, and form the common law, in its stricter and more usual signification.

"2. Particular customs; which, for the most part, affect only the inhabitants of particular districts.

"3. Certain particular laws, which, by custom, are adopted and used by some particular courts, of pretty general and extensive jurisdiction. As to general customs or common law, properly so called, this is that law by which proceedings and determinations in the King's ordinary court of justice are guided and directed. This, for the most part, settles the course in which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligations of contract; the rules of expounding wills, deeds, and acts of Parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particu-

lars, which diffused themselves as extensively as the ordinary distribution of common justice requires."

It was so much of the common law of England, of the first description, that our ancestors brought with them and adopted in this country, as was applicable to their situation and circumstances; that part of the general common law of England, which the English people have always held dear, and claimed as their birth-right; upon which depends a great proportion of their rights and liberties; and against which no complaints have been made by the people in England. This important and beneficial part of the common law of England was adopted by the first English settlers in this country; by them it was nourished and preserved, and transmitted to their posterity; under it we have prospered; it enters into all our proceedings; a principal part of our rules of evidence are derived from it; and it is to the common law we must look for the origin of the invaluable right of trial by jury. Take away the common law from your courts of law, as usual in this country, and your courts cannot proceed a step. The common law doctrine of contempts of courts in England, and the common law punishment that the offender should lose his right hand for certain contempts, never was considered, used, or claimed to be used, as law by the courts in this country.

The same honorable gentleman has said, that we ought to go back to the commencement of our Revolution for the origin of parties in this country—Whigs and Tories. I believe, sir, that the party distinction of Whig and Tory, ceased, pretty much, with our Revolutionary war; upon the promulgation of the present Constitution, a party, I believe, in every State opposed its adoption; and was it not this same party that, for twelve years, opposed all the most important measures of the Federal administration? Was it not this party that assailed, with every species of calumny and abuse, the illustrious WASHINGTON, for issuing, at the commencement of the late European war, a proclamation of neutrality to this country? Was it not this same party that formed and instituted Democratic societies throughout the Union, to overawe and control the constituted authorities of our Government? Was it not the spirit of this party that excited two insurrections in a part of our country? And had not the spirit of this party been checked, it would, most undoubtedly, have involved this country in a war with a powerful foreign nation.

The same honorable member has told us, too, that, if the circuit courts are abolished, still the Federal party will have more than their proportion of the loaves and fishes; and he thinks his party is entitled to a share of them; that is candid and sincere—was it, then, for the loaves and fishes that the honorable gentleman and his friends contended for twelve years? I believe the honorable gentleman; the loaves and fishes have been taken from the meritorious—from the war-worn soldier—from those against whom no complaint of misconduct in office was ever made, and given to the friends and favorites of the present Chief Magistrate. According to the principles of our

Constitution, these officers, like all other officers of our Government, are the agents of the people, made and created for the people's benefit; and while they are conducted properly and to the satisfaction of the people, I cannot discover either the justice, propriety, or regard to the wishes and interest of the people in the Executive, to remove them from office.

Mr. Chairman, I will forbear saying anything more; I have already consumed more time than I intended. I can only express a hope, that the bill before the Committee will not be finally passed into a law.

Mr. HASTINGS closed his remarks at four o'clock, when Mr. RUTLEDGE moved, that the Committee should rise: he was supported by Mr. GRISWOLD.

The motion was opposed by Messrs. NEWTON, S. SMITH, and MITCHELL.

The question for the rising of the Committee was lost—yeas 31, nays 52.

Mr. DANA rose and adverted to some of the observations which had been made respecting the influence of a gentleman from Virginia. He was called to order by Mr. GILES.

The Chairman, Mr. JOHN C. SMITH, said, that observations tending to show that any one gentleman on the floor possessed an undue influence in the House, could not be in order. He said he would entreat his honorable colleague, notwithstanding the wide range taken by other gentlemen in the course of the debate, to abstain as much as possible from all personal allusions and irritating expressions.

Mr. DANA.—Mr. Chairman, I was disposed to do justice to certain members of the House between whom and myself there might be supposed to exist some of those differences of opinion which have been styled unessential. It was my intention to vindicate them from the imputation of being under the influence of the gentleman from Virginia. This was very different from what he probably imagined at the time of calling me to order. But it shall now be waived. The recommendation from the Chair is entitled to respectful attention.

It is with deep regret, sir, that I have seen the present measure pushed forward upon this House. Yet I will acknowledge that, since the commencement of the main debate, I have experienced a peculiar satisfaction in witnessing the disposition to allow so fair an opportunity for discussion. It is like the sensation which accompanies the return of health, after having suffered severely from the violence of disease.

Whatever difference of political sentiment may exist among us, all will agree, I trust, in its being to the common reputation of gentlemen, that, in the present instance, the deliberations have been conducted with such impressive order. It may be further remarked, as a source of grateful reflection, that, on this momentous subject, we have not been addressed as if the eloquence of avarice were the only eloquence becoming the American Congress. In the course of debate, indeed, there has been some notice of the expense of the Judicial establishment, as organized by one of the acts passed at

the last session; but this has not, to my recollection, been insisted on, in this House, as the principal motive for adopting the bill on your table. On the contrary, one of the zealous advocates of the bill (Mr. RANDOLPH) has spoken of the expense as being a paltry sum, and disclaimed the being actuated by this consideration.

Such a frank declaration, on his part, was alike honorable and proper. For what is the additional expense that must ultimately be incurred for the support of the Judicial establishment, according to the principles of the act now proposed to be repealed? Permit me, sir, to state it distinctly.

The act in question is, "An act to provide for the more convenient organization of the courts of the United States;" which was approved on the 13th of February, 1801. By that act, six circuits were established; five for the Atlantic States, and a sixth for Kentucky, Tennessee, and the District of Ohio.

To each of the five first circuits, three circuit judges were assigned, and an annual salary of two thousand dollars was allowed to each judge. In the sixth circuit, the judicial duties were to be performed by a circuit judge, with the assistance of the district judges of Kentucky and Tennessee. An annual salary of fifteen hundred dollars was allowed to the circuit judge; and the two district judges were each to receive the same sum. By this establishment, the district judge of Kentucky became entitled to five hundred dollars annually, in addition to his former salary; and the district judge of Tennessee, to seven hundred dollars.

According to this statement, there are for five circuits, the salaries of fifteen judges, at two thousand dollars - - - - -	\$30,000
For the sixth circuit, the salary of one circuit judge - - - - -	1,500
The additional sums allowed to the two district judges - - - - -	1,200

The amount of the whole for a year, is \$32,700

It is to be remembered, however, that, after the office of one of the Associate Justices of the Supreme Court shall become vacant, by resignation, death, or Constitutional removal, the vacancy is not to be supplied by a new appointment; but the court is thereafter to consist of no more than five justices; that is, of one Chief Justice and four Associate Justices. This is the purport of the third section of the act. All the justices having been duly appointed, and having accepted their commissions, were entitled to their offices so long as they should behave well. As none of them could Constitutionally be divested of office by an act of Congress, the court must continue to consist of six justices, until one of them ceases to hold his office; in which event, the office, and with it, the salary, can rightfully be discontinued. After a Constitutional vacancy shall exist, this part of the act may have effect; and there will then be a reduction of three thousand five hundred dollars for the salary of one Associate Justice.

MARCH, 1802.

Judiciary System.

H. OF R.

The salaries of the judges in the respective circuits being therefore stated at - \$32,700
Deduct the allowance for one associate justice of the Supreme Court - 3,500

And the difference being - - \$29,200
is the additional expense to be ultimately incurred for the support of the Judicial establishment. This is the clear result of the whole. It has now been stated particularly, that the truth might be precisely ascertained on this point.

An expense of twenty-nine thousand two hundred dollars annually, it will be readily acknowledged, might be considered as a large sum, if it were to be paid by an individual in this country. But it should be kept in mind that this expense is for a public establishment interesting to the whole people of the United States. It is to be paid by a nation—a rising nation spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, advancing rapidly to destinies beyond the reach of mortal eye."

If you compare this with your permanent expenditures as estimated by the present Secretary of the Treasury, you will find it is not the one hundredth part of the amount to be paid for the current service of the year, even if you exclude all the payments on account of the public debt. It is not the third part of what is estimated as necessary for maintaining one of your frigates.

If you compare the expense with the means of paying it, you will find the whole sum for the circuit judges of the fourth circuit does not amount to the duties payable on seven hundred coaches, chariots, post-chariots, post-chaises, phaetons, and coachees owned in Virginia. That State, it is to be remembered, forms a part of the fourth circuit; and on examining the Treasury documents laid before Congress, you will find, that during the year 1800, there were in Virginia seven hundred and nine pleasurable carriages, such as I have just mentioned; besides upwards of three hundred other four-wheel carriages paying inferior rates of duty.

If you compare the additional expense, which has been stated, with the population of the United States, and apportion it accordingly, you will find it to be but very little more than half a cent for each person.

It would be a national reproach, it would be an infamy to the American name, if the consideration of such an expense could excite the solicitude which has been manifested respecting the question now in debate. The expense is not, cannot be the true cause of what has been witnessed on this subject. Considerations of a different nature, such as appeal more eloquently to the passions, must have operated to produce the effect. You may form some judgment of them, from what was said by a gentleman from Virginia (Mr. GILES) when he referred to the journals of the last session, and spoke about opposing the public will.

But before replying to that part of his observations, I beg liberty to advert to what has been said respecting the character of officers who have been dismissed since the 4th of March. It might

have been hoped that it would be sufficient for gentlemen to be in possession of power, without attempting to deprive those whom they have driven from office of their well earned reputation. Are the persons now in power sensible of a deficiency of their own stock? And do they expect to supply it by this species of plunder?

A gentleman from Maryland (Mr. S. SMITH) has made some observations conveying a general allusion to negligences and delinquencies in office; but he did not profess to apply the allusion to all the gentlemen who have been dismissed. If I did not misunderstand him, he would admit, that there were some worthy men among them. I regret that the gentleman from Maryland is not now in his place. If he were present, I am persuaded he would not wish that his observations should be left so as to be construed to the injury of meritorious officers. Lest they should be thus misconstrued with reference to the State from which I am a representative, I could have wished to inquire whether he would be understood as imputing any misconduct to the gentlemen who have been dismissed in Connecticut.

It is well known that it has been the Executive pleasure to dismiss a supervisor of the revenue for Connecticut, and two collectors of the customs. The gentleman from Maryland, I firmly persuade myself, could not intend to accuse them. I know them personally. They are men of worth. I am confident no gentleman who knows the truth and respects it, will affirm, that either of those officers was incompetent to his office, or inattentive to his duty, or unfaithful to the Constitution. Nor can it, with a color of justice, be pretended, that they were hostile to our Revolution. They all gave decisive proofs of their attachment to it. No anti-revolutionary adherence to our enemies can, with truth, be charged against them; and their official integrity is irreproachable. If criminality is to be imputed to them it must be for a new species of crime; they have been guilty of obeying the laws of their country.

Was it a reason for their dismissal, that some of the persons high in office did not expect them to be so devoted to particular views as was wished? Whatever it may have been, I will not, in this place, imitate gentlemen on the other side who have so freely called in question the characters of persons differing from themselves in political opinions. Nor will I here undertake to draw a comparison between the officers who have been dismissed and those who have been appointed to their places. I waive any general investigation of the characters of men recently placed in office. It might occupy too much time, especially at this late hour. I quit the topic with a general remark: gentlemen should remember their glass house is not a fortress.

After this vindication of meritorious men who have been removed from office, I will now attend more particularly to some observations of the gentleman from Virginia. He has spoken of the judicial act of the 13th of February, 1801, as if the passage of it had been attended with improper circumstances, and thence has attempted to de-

duce the inference that it ought to be repealed. He read part of the Journal of the last session, and charged certain members of the House with having been engaged in opposing the public will at the time when the act was approved. The Journal shows, that on the 13th of February, eighteen hundred and one, the representatives, voting by States, proceeded to the twenty-ninth ballot for President, and the result was the same as had taken place before; the votes of eight States given for Thomas Jefferson; the votes of six States for Aaron Burr; and the votes of two States divided. Much has been said on this topic, which has at length been brought forward as a public charge by the gentleman from Virginia. It is now time that it should be examined.

According to the principles of our Government, the public will, when explicitly ascertained by an authentic act, is the law of the land, and must be obeyed. Of this there can be no doubt; it is beyond all question. But this public will is not merely the will of part of the community, a section of the people; it is the will of the great body of American citizens. The highest and most solemn expression of the public will in this country is the Constitution of the United States. This was agreed to by the General Convention; was transmitted to the Legislatures of the several States by the unanimous resolution of Congress under the Confederation; was recommended by all those Legislatures, when they passed laws for submitting it to conventions for their ratification, and was finally ratified by the conventions of all the States in the Union. It was thus established by the general consent. In this we should acknowledge the high authority of the public will.

There is, however, a misfortune which attends the argumentation of some gentlemen. They substitute a part for the whole; and would confound the will of a certain portion of the people, however vaguely expressed, with the will of the whole public body as explicitly manifested by an authentic act.

What manifestation was there of the public will relative to the late election of a President of the United States? The only authentic evidence of the public will on this subject proved, that Thomas Jefferson, of Virginia, and Aaron Burr, of New York, were equally the objects of approbation. The majority of the electors had given them an equal number of votes. What then was the difference of right between them? Was it, that one of the candidates was a Virginian? Was it that the members of Congress were assembled on the banks of the Potomac, with Virginia in view on the other side? Must it be acknowledged as the prerogative of that State to impose a Chief Magistrate on the Union? Or was there a difference of right, because Virginia, with its extent and population, could make more clamor than any other State? The noise of so great a State may sometimes seem loud enough for the voice of the people of the United States. And are they, therefore, in this House to be confounded with each other? If so, the observations about the public will, of which we have lately heard so much from

a certain quarter, must be understood to mean the will of Virginia; and we may thus judge of the argumentation when gentlemen from that State are speaking of the respect due to the public will.

Two persons were presented, in Constitutional form, to the House of Representatives, as being equally candidates for the office of President: one from Virginia and the other from New York. When they were so presented, the choice between the two candidates was devolved on the Representatives, by the Constitution of the United States. After maturely considering the question, it was for them, as ultimate electors, to vote as they judged to be most for the public welfare. They voted by States, as required by the Constitution. And are gentlemen to be here accused for exercising the Constitutional right of election according to the conviction of their own judgments? When called upon, under the Constitution, to elect one of the two candidates, were they not bound, by the nature of their duty, to give their votes according as the one or the other was by them judged to be more or less preferable? Upon what principle can gentlemen be accused of hostility to the interest of the people, because they did not think proper to elect the candidate from Virginia? Are our affairs already reduced to such a situation that it is to be charged as a public offence, if any member of this House has failed to vote for a Virginian to be the President of the United States?

It was the Constitutional right of members of this House, in deciding between the two candidates, to give their ballots for the one whom they believed to be superior in practical capacity for administering the Government—one whom they believed to be not hostile to the commercial interests of the country, and not disposed to subject the Union to the domination of a particular State, whatever might be its lordly pretensions in consequence of extent of territory or antiquity of dominion.

As the gentleman from Virginia has thought proper to speak of events which took place about the time of passing the act in question, allow me, sir, to mention one circumstance, of which he has said nothing. The act, as finally enrolled, was signed by the Speaker of the House of Representatives after the balloting for a President had commenced; and the Clerk carried it to the other House for the signature of their President. The candidate from Virginia was then in the Chair of the Senate. The Clerk of this House, on first presenting himself, as was customary, at the door of the Senate Chamber, was not admitted. The situation came to the knowledge of a Senator, and was communicated to the Senate. After the sense of that body was found to be for his admission, the door was opened, and the Clerk was admitted to deliver his message, and present the enrolled bill for signature. It was then signed by the President of the Senate.

What should be thought of this, as taken in connexion with the fate of the act and pendency of the Presidential election? Was it a circumstance which must ever be remembered with

MARCH, 1802.

Judiciary System.

H. OF R.

mortification, and which therefore will never be forgiven?

To give a further color to the suggestion that the passage of the act was attended with improper circumstances, the attempt has been made to impress an idea that it was adopted without mature deliberation, and hurried through its different stages in a reprehensible manner. If we are not willing to be misled by pretext, let us examine what was the fact.

A recurrence to the Journals of the House will prove that the subject of the Judicial establishment was recommended by the President of the United States to the attention of Congress at two successive sessions. In his communication at the opening of the first session of the sixth Congress, he recommended the subject in the following terms:

"To give due effect to the civil administration of Government, and to insure a just execution of the laws, a revision and amendment of the Judiciary system is indispensably necessary. In this extensive country it cannot but happen that numerous questions respecting the interpretation of the laws and the rights and duties of officers and citizens must arise. On the one hand, the laws should be executed; on the other, individuals should be guarded from oppression. Neither of these objects is sufficiently assured under the present organization of the Judicial department. I therefore earnestly recommend the subject to your serious consideration."

In the House of Representatives, this part of the President's Speech was referred to a select committee. They reported a bill which contained a variety of provisions for amending the system. The bill was referred to a Committee of the Whole, in which it was discussed several days, and was afterwards recommitted to the same gentlemen who had reported it. As it was printed for the use of the members, and the subject was extensively interesting to the community, it was judged proper to defer a final decision until another session, and in the mean time gentlemen might have opportunity to acquire information that would assist them to form a more satisfactory judgment.

At the second session of the sixth Congress, the subject was again recommended by the President. These are his words:

"It is, in every point of view, of such primary importance to carry the laws into prompt and faithful execution, and to render that part of the administration of justice which the Constitution and laws devolve on the Federal courts, as convenient to the people as may consist with their present circumstances, that I cannot omit once more to recommend to your serious consideration the Judiciary system of the United States. No subject is more interesting than this to the public happiness; and to none can those improvements which may have been suggested by experience be more beneficially applied."

On this recommendation a select committee was appointed. That committee reported a bill to provide for the more convenient organization of the courts of the United States. The bill underwent a long discussion and a variety of amend-

ments. It was finally passed in the House of Representatives by a majority of 51 to 43; and in the Senate by a majority of 16 to 11. After knowing these facts, will gentlemen have the hardihood to call this a hasty measure?

Compare the whole proceedings with what took place respecting a former act. Gentlemen have spoken of the general power of Congress to repeal acts passed by their predecessors. Are they prepared to repeal the act to which I now refer? It is the act relative to the temporary and permanent seat of Government, passed in July, 1790. That act was carried in the Senate by a majority of 14 to 12. In the House of Representatives, a Committee of the Whole agreed to it as it came from the Senate. Twelve different amendments were proposed in the House; the yeas and nays were taken on each of them, and every amendment was rejected—all in one day. A motion was then made for the third reading of the bill on the Monday following; the motion was negatived. It was moved that the third reading should be on the next day; this was negatived. The yeas and nays were taken twelve times during the sitting. A motion was made to adjourn; this was negatived. The general rule of the House being against reading a bill twice on the same day without special order, a motion for then reading the bill the third time was made on the part of its advocates, and carried. On taking the yeas and nays, for the thirteenth time in one day, the bill passed by a majority of 32 to 29. Mark the smallness of the majority in both Houses; the utter rejection of every amendment in the House of Representatives; the hurried manner in which it was forced on to the final question. Recollect other considerations relative to the passage of that act, and then judge whether it was not attended with circumstances signally improper. If matters of this kind constitute a sufficient cause for gentlemen to repeal any act passed by their predecessors, why should we remain here in pursuance of that act? Will any gentleman say it is for our personal convenience that the seat of Government is now at this place? Is it at present for the public convenience? Is it less expensive for individuals, or for the public, than it would be in some of your commercial cities? Have you here the opportunities for valuable information which might be had elsewhere? What, then, should detain us, if it be not a regard to stability and consistency in public proceedings, combined with a regard to the expectations of respectable persons seriously interested in the question? But if you may repeal the act organizing the Judicial system, what principle is there that ought to confine the Government to the place in which we are now assembled? Repeal this act, as is proposed by the bill on your table, and you shake the principle of public stability and consistency. Repeal this act, and there can be no principle of Constitutional obligation, none of political honor, or legal right, to detain you here.

Gentlemen in favor of the proposed repeal have spoken about the act as if this organization of the courts did not contribute to the more convenient

administration of justice. The argument deserves examination.

According to the original system, as delineated in the Judicial act that was approved in September, 1789, two courts, to be called circuit courts, were to be annually holden in each district of the respective circuits, by any two Justices of the Supreme Court, and the district judge of such district. The attendance of two Justices of the Supreme Court at each circuit court in the respective districts, besides two sessions of the Supreme Court annually holden by all the Justices at the seat of Government, required of those gentlemen such burdensome services that they at length addressed a letter on this subject to the President of the United States, who communicated it to Congress. On recurring to the Journal of the second session of the second Congress, it will be found that the communication was made on the 7th of November, 1792. The copy of the letter, as sent by the President, has been obtained from the Clerk's office. It bears date Philadelphia, 9th August, 1792, and is in the following terms:

SIR: Your official connexion with the Legislature, and the consideration that applications from us to them cannot be made in any manner so respectful to Government as through the President, induces us to request your attention to the enclosed representation, and that you will be pleased to lay it before Congress.

We really, sir, find the burdens laid upon us so excessive, that we cannot forbear representing them in strong and explicit terms.

On extraordinary occasions we shall always be ready, as good citizens, to make extraordinary exertions. But while our country enjoys prosperity, and nothing occurs to require or justify such severities, we cannot reconcile ourselves to the idea of existing in exile from our families, and of being subject to a kind of life on which we cannot reflect without experiencing sensations and emotions more easy to conceive than proper for us to express.

With the most perfect respect, esteem, and attachment, we have the honor to be, sir, your most obedient and most humble servants,

JOHN JAY,
WILLIAM CUSHING,
JAMES WILSON,
JOHN BLAIR,
JAMES IREDELL,
THOMAS JOHNSON.

THE PRESIDENT OF THE UNITED STATES.

It was undoubtedly in consequence of this communication that the system was revised at the same session of Congress. A further act respecting the courts was passed, and approved on the 2d of March, 1793. By that act the system was altered, so that the attendance of one Justice of the Supreme Court was to be sufficient for holding a circuit, with the district judge. In case of their being divided in opinion on the final hearing of a cause, or on a plea to the justification, the cause was to be continued to the succeeding court, when another Justice might attend.

This arrangement afforded a relief to the Justices of the Supreme Court; but, on experiment, it was found to produce serious inconveniences to suitors in the circuit courts.

It should be recollected, that the circuit courts decided, without appeal, all causes of a civil nature, at common law or in equity, where the value of the matter in dispute was between five hundred and two thousand dollars. To refer causes of this importance to a final decision of a single judge must be contrary to the sound principles of jurisprudence. But the mode adopted for avoiding this impropriety subjected the parties to accumulated disadvantages and expense, in consequence of delays which were continually occurring. Will it be too much to admit, that the decisions on the respective causes were generally delayed at least for one term in a year? What would be the average expense to the parties on account of such delay? If you include the expense for counsel, for witnesses, for the attendance and travel of the parties, on both sides, is it not moderate, very moderate, to estimate the amount of these items at twenty dollars for each cause? The expense for fifteen hundred causes amounts at this rate to the aggregate sum of thirty thousand dollars, payable by the suitors for delays resulting from the defective nature of the Judicial system. Compare this with what has been stated as the additional expense to the Government, on account of the new organization of the courts! A tax of thirty thousand dollars annually, levied solely on the suitors in the circuit courts, and levied in consequence of defects in your laws, was a burden of which they might reasonably complain. It was a burden whose oppressive weight the Government ought not to continue upon persons who had the right to demand justice freely, and without delay. The act of the last session, as it obviates the former causes of delay, relieves the suitors from this unreasonable and vexatious tax. This statement is not a mere affair of speculation. Who disputes the fact of there being at least fifteen hundred causes depending in the courts of the United States? It is proved by a document before the House. The document No. 8, notwithstanding its defects, exhibits enough to prove this fact.

The superior convenience of the new system is sufficiently proved, if it be possible for gentlemen to want proof of what is so evident, by the representations from the bar of Philadelphia, and the bar of New Jersey, if you regard professional experience, and by the representations from the respectable bodies of merchants in Philadelphia and New York, if you regard mercantile knowledge. Other considerations might be mentioned, to evince the general convenience of the new system, and the inconvenience of the former one; but the delays, uncertainties, and contradictory proceedings, which resulted from the late defective arrangement, have already been pointed out with such clearness and force of illustration, that it must be superfluous for me to dwell upon this part of the subject.

On the other side, reference has been had to a document received from high authority. It is the document No. 8, which has been laid before us by the President of the United States. If the Congress had wanted the information which that document professes to give, they would have called for it, I presume, from a subordinate officer, whose

MARCH, 1802.

Judiciary System.

H. OF R.

proper duty it would be to give it—the Attorney General, not the President. On this occasion, however, the Chief Magistrate has been pleased to volunteer his services. The purity of his motives is not now arraigned; but the propriety of his conduct is not perfectly unquestionable. Let me not be understood as insinuating, that he has intentionally given us incorrect information. The extreme impropriety of any such intention, without regard to the hazard of eventual exposure, should repel every idea of this kind: but the purity of motive does not impair the evidence of fact. No doubt it was the object to give us such information as had been procured. Yet, when information was not desired, why should we have such as has been laid before us?

This document, with a boldness of language bordering on poetic license, has been called an exact statement. After its incorrectness has been detected and exposed, we have a supplementary document sent to us, stating (I am not confident that I precisely recollect the mollifying style of the last communication, but I think it was nearly to this purpose) that there was some deficiency in exactitude. What opinion is to be formed of this proceeding? The Chief Magistrate comes forward, unrequired, unasked, and communicates a statement which is explicitly declared to be exact; and yet he afterwards corrects that statement by following it up with another. It must be unfortunate for the Legislature and for the Chief Magistrate, that errors of this kind should take place, because they tend to excite doubts where no doubt ought to exist. When the President of the United States, with his high responsibility, and all his means for information, is induced to come forward, in the face of the whole American people, and to make to them, through the Legislature, an official declaration relative to facts, it becomes his advisers to be well assured of the correctness of such declaration. When the President gives the sanction of his authority to any statement of facts, and affirms it to be exact, it should be entitled to full credit, beyond any possible contradiction.

The manner in which this document was mentioned, in the communication of the President at the opening of the session, would lead to the idea of its containing ample information respecting the business in the courts of the United States. At present, laying aside all the clerical errors which have been pointed out, I must be permitted to think, there are some others of such importance as to deserve animadversion.

After what has already occurred, I confess the communication itself strikes my mind as an Executive manifesto against the former Administration; and I deem myself warranted to consider the present attack on the Judiciary as having been comprehended in the general plan of hostile operations.

In a concern so important as this, where the stake was so great, and the game to be played so deep, it is not to be presumed that the First Magistrate would recommend the measure, as he has done, without advising previously with the Ministers, of whom he may be considered as the head.

If his powers are to be assimilated to the prerogatives of the British monarch, according to the spirit of what we have heard from some of the advocates of the present bill, it must of course be warrantable for the greater freedom and decorum of debate, to consider him as surrounded by his Ministers in council, and acting with their advice.

Taking up the communication, however, as we find it, what do we further observe? It is well known that circuit courts were holden in the Spring the last year, and again in the Autumn. Yet the document (No. 8) has reference to the 15th of June. If it was the wish to give a complete statement, upon which we might properly act with respect to an important system, why did not the Executive, with his Ministers, think fit to cause the suits for the whole year to be communicated, instead of a part of the year, during which the system could not have gone into fair operation? Why could not we be furnished with a report of the business before the circuit courts at their last autumnal sessions? Has there not been sufficient opportunity for obtaining the information? Why, then, is it that we have a statement for only the first part of the year, and not for the whole? Is this giving to us, or to the public, full and fair information? It cannot certainly be pretended that we have before us all the official information which might have been given upon this subject, although its importance is not to be denied. If we were to act on the information sent us, we ought to have been presented, as far as practicable, with a full view of the business in the circuit courts since their late organization.

But is the utility of courts to be tested solely by the number of causes, and not by the magnitude of the questions decided? A thousand causes, before courts of very limited jurisdiction, such, for example, as those before justices of the peace in some of the States, are of far less consequence than a single cause that might come before a court of the United States. Did the Ministerial advisers of the Executive hold the discernment of the American Congress in such low estimation as to imagine that, in legislating on this subject, the nature of the business before the respective courts would be wholly disregarded? Where great questions are litigated, your courts should be so constituted as to authorize great confidence in their decisions. The value of the interests immediately in controversy, and the extensive influence of the principles on which the decisions must depend, should both be considered in estimating the importance of a judicial establishment. Where life may be taken by sentence of the court, and where causes may be decided of the value of many thousand dollars—causes in whose proper decision the commerce of the country is seriously interested; where the causes are of this nature, it is important that the organization of the court should be such as to inspire confidence by its tendency to unite talents and character, with ample opportunity for mutual comparison of opinions and mature deliberation. Were the Ministry wholly regardless of these principles? Notwithstanding the facility with which further informa-

tion might have been given as to the nature of the respective causes, especially in relation to the value in controversy, it is to be remarked, that the communication is wholly silent respecting these objects.

As I see the gentleman from Maryland (Mr. S. SMITH) in his place, I beg liberty to notice again the dismissals from office in Connecticut. I refer to the case of the supervisor of the revenue and two collectors of the customs. If I understood the gentleman when he was speaking about the officers who have lately been removed, he would allow that there were some worthy men among them, although he appeared to be satisfied that, in general, they ought to have been dismissed for not conducting properly in office. His sense of justice, I am persuaded, would not permit him to apply this censure to the gentlemen whom I have mentioned. But as he did not make any particular exceptions, and his language might, perhaps, be construed so as to implicate persons very differently from his intentions, I could wish the gentleman to state whether he would have his observations understood as implicating the gentlemen who have been dismissed in Connecticut? If he will be so good as to do this I will give place to him.

MR. S. SMITH.—My observations did not apply to those gentlemen. I said nothing against them.

MR. DANA.—I am happy to have had this opportunity of making the inquiry. I believed the gentleman from Maryland to have been in situations where he might be informed respecting those gentlemen; and was satisfied that, if he had become acquainted with their true characters, he could not be willing to accuse them of having conducted improperly in office.

To resume the consideration of the document (No. 8,) it is to be observed, there is another material deficiency. The document has been recommended to our attention as if it were an exact statement of all the causes decided or pending before the courts of the United States. But is it so? No, sir! It is but an imperfect docket of the circuit courts; we must include in this description, however, the courts holden by such district judges as exercise the powers of circuit courts. There is no mention of the causes before the ordinary district courts. Not a word about the causes in the Supreme Court. Why are all these omitted? Is it of no moment for us to be acquainted with them, if we are to revise the whole "Judiciary system of the United States?" After the recommendation of this revision, at the opening of the session, such an imperfect document serves to argue an expectation that Congress would proceed to alter the system without examination of the subject. If it was prepared with a view to inform the people, what information does it give? Such as cannot be relied on. We have been called upon to receive it as completely correct; it is found to be palpably erroneous and defective.

In addition to what has been communicated to us on the part of the Executive, the system, which the present bill is designed to repeal, has been

censured in the memorials of sundry inhabitants of the city and county of Philadelphia. Their memorials are all alike; different persons having signed printed copies to the same effect. What are their complaints against the act in question? The time of bringing it forward, the manner of conducting it though the several stages, the subsequent appointments under it, are all mentioned, and, for reasons in favor of repealing the act, there is a general reference to the debates in the Senate. It is not in order, sir, for any member of this House to mention, in debate, what has been said in the other House. By your rules, I am not permitted to reply to any of the arguments which have been urged by those Senators who advocated the repeal. This part of the memorial, therefore, cannot, without inconsistency, be regarded by this House. For the rest, what information is given you? The proceedings of Congress appear from their records, and, it is to be presumed, are at least as well known to the respective members, as to the memorialists. The mention of appointments under the act may perhaps be considered as implying some information unfavorable to the characters of the circuit judges. But, as to them, the memorialists cannot be presumed to have particular knowledge, unless it be with respect to judges in the third circuit. And these judges are spoken of in terms of high respect, by the gentlemen of the bar in Philadelphia and New Jersey. This honorable testimonial is from gentlemen of professional eminence, who have had an opportunity of personally observing the judges in attending the respective courts. To this effect too, you have the testimony of the very respectable body of merchants in Philadelphia, whose representation on this subject has been submitted to the House. They fully concur with the gentlemen of the bar in highly appreciating the services of the circuit judges. The characters of those judges are, unquestionably, placed on a basis too firm to be affected by any thing insinuated against them.

The representations from the gentlemen of the bar in Philadelphia and New Jersey, furnish a strong body of evidence in favor of the new organization of the courts. They are gentlemen accustomed to the transaction of professional business, and have experienced the comparative effects of the former system and the present. In a manner honorable to themselves and to their profession, the gentlemen of the bar in Philadelphia, although well known to entertain different sentiments on political topics, have laid aside their political distinctions to attend to this subject, which concerns the common interest of honest men of all parties; and have united to support a system which they believe to be of high importance for the due administration of justice. It is to be regretted that any member of the National Legislature should be induced, from any cause whatever, to give utterance to such sentiments as have been thrown out against the professional gentlemen who have borne testimony in favor of the present organization of the courts. Persons who have been intimately acquainted with none but the mere underlings of the profession, might perhaps be expected to indulge

MARCH, 1802.

Judiciary System.

H. OF R.

suspicious, that gentlemen so respectable as these, would state their opinions in favor of a system, solely from motives of pecuniary interest, and not from the conviction of their unbiassed judgment. An acquaintance with the course of professional business, however, might satisfy men of candid minds, that pecuniary motives cannot have induced the gentlemen of the bar to address you as they have done. It is to be hoped, for the honor of the House, that we shall not act upon sentiments so little worthy of the National Legislature, and so unjust to gentlemen of professional reputation. Sir, the testimony of the gentlemen of the bar on this subject, is one of the most respectable sources of opinion.

After what they have said, to evince the superior convenience of the present organization of the courts, if any doubt can exist as to the fact, it is to be recollected there is the additional testimony of mercantile gentlemen in the populous cities of Philadelphia and New York. It is observable, however, that the merchants of Philadelphia, and the Chamber of Commerce in New York, like the gentlemen of the bar, have abstained from any discussion of Constitutional or political questions. With a delicacy as honorable to themselves as it is respectful to the Legislature, they have left it for the respective members to reason on general topics; and have spoken of what has passed within their own observation and experience. The merchants address you with a particular reference to the commercial interests of the country. Will you deny their practical knowledge with respect to the business in which they are occupied, and for which they were educated? They speak of the proposed repeal as a measure which must be seriously prejudicial to their commercial concerns. It should be remembered, that the questions which very frequently occupy the courts of the Union, are such as relate to commerce, not only with foreigners, but between persons of different States. On these subjects Congress have power to legislate, and the Judiciary to judge. Much of the credit of the country, the assurance of obtaining justice, the national character for integrity, depends on a system for the wise and impartial decision of judicial questions. Is it not necessary to your commercial prosperity, that the foreign creditor of your merchants should have a security for as ample justice here as he could in his own country? Is it not necessary, in a national view, that there should be such an organization of the courts as will fully satisfy creditors abroad, or in the respective States, that their claims shall be fairly tried without being subjected to the influence of local prejudices? Let me ask, sir, are your merchants generally such capitalists as to make instant payment for everything they import?—They cannot do it. They must have credit, if the country is to continue its accustomed commerce. And we know that credit is not an object of compulsion, as it respects those who give it. They require a just cause of confidence. Credit is free as human thought. Mercantile gentlemen in Virginia, in Georgia, or any other State, when it is known that ample justice is assured to creditors in the courts

of the United States, may obtain a credit abroad which otherwise would never be given them. Without a confidence of this kind, you must not, you cannot speak of your country as being in good credit. When gentlemen of extensive mercantile information address you in favor of these courts, as requisite for securing mutual justice and the prosperity of commerce, they are entitled to attention. They are a body of men who have too much honor to state for true, anything of which they are not well satisfied that it is the fact; and they have too much knowledge to err on a point so intimately connected with their pursuits.

What, sir, I pray you, must be the consequence of measures contemplated at the present session of Congress? If you abolish the internal revenues, and lay upon the commercial interest the burden of supporting Government, will you superadd the destruction of an establishment which authorizes general confidence, and is beneficial to your commerce both foreign and domestic?

Consider the representation from the respectable body of mercantile gentlemen of Philadelphia. If you abolish all the other courts, they request that the circuit court may be preserved in the third circuit. This, it is known, extends over New Jersey, Pennsylvania, and Delaware. The merchants request the preservation of this court, as being an institution in which their commercial welfare is most intimately concerned. If you resolve that all the expenses of Government shall be defrayed from commerce, will you not pursue an institution which may assist the merchants to obtain the means of paying the sums which you demand from them?

Gentlemen have undertaken to inform us that the State courts will be sufficient; and appear to have a peculiar jealousy of the Federal courts. But they may be reminded, that the present question is not what they may think, but what others will think of the courts of their respective States. Whatever may be the administration of justice in any of the State courts, yet they are not sufficient, in a national view, if foreigners or citizens of other States have not a confidence in them. The declarations of gentlemen, therefore, in commendation of the courts of their own State, cannot, in the present case, establish the point in their favor, unless it is also shown that equally favorable opinions of them are entertained by persons who live without the State. But why are some gentlemen so zealous for State courts, to the destruction of the courts of the Union? Shall we be told that such is the will of the people? While I speak, sir, of the people in this manner, I mean Virginia. Why should that particular State have a predominant influence for governing the Union? And why should a zeal against the Federal courts be particularly manifested from that quarter? Is it apprehended, if these courts should continue and become objects of general approbation, that the effect may be incompatible with some part of their policy? Is it apprehended, that there may eventually be issued, from the Federal courts, a process which will seriously affect some of their baronial estates? It would be too much, for this

cause, to abolish a system which is so evidently formed for the convenient administration of justice.

As a further reason for repealing the act in question, it has been contended, that some of its provisions are unconstitutional. This, however, if true, does not require you to repeal the whole of an act, containing a variety of distinct provisions; although it might be a sufficient cause for amending the act, so as to remove from your statute book such parts as are judged to be not agreeable to the Constitution. A single provision which may be thought exceptionable, does not necessarily contaminate the whole of a system. Gentlemen have spoken as if the act in question had inflicted a wound on the Constitution. But will you, to cure a supposed wound, employ the guillotine?

A gentleman from Kentucky, (Mr. DAVIS,) has charged the act with being unconstitutional, because it authorized the Supreme Court to issue writs of mandamus. He founds his charge on the idea that the jurisdiction of the Supreme Court is appellate, and that the writ of mandamus must issue from a court of original jurisdiction. Will the gentleman say, that it is legally correct to call the mandamus an original writ? Will he state what is the nature of the writ of mandamus? It is essentially appellate. It is in the nature of an appeal to a superior tribunal for redress, in cases where it is alleged that justice has not been done by a subordinate tribunal or officer. There is no novelty, sir, in allowing to the Supreme Court the power of issuing writs of mandamus. A provision to this effect is found in the thirteenth section of the original Judicial act, passed in 1789. Applications have been repeatedly made to the Supreme Court for such writs. Allow me to state one of them. It was founded on an act of Congress respecting invalids, passed in 1792. That act referred it to the judges holding the several circuit courts, to examine the claims to invalid pensions, and to certify the result, with their opinion in each case, to the Secretary of War, who was accordingly to place the name of such applicants on the pension list, except in any case where he should have cause to suspect imposition, or mistake. The judges, as such, did not think the act Constitutionally obligatory upon them; but, in several circuits, they agreed to consider themselves as commissioners designated by the act, and, under this character, proceeded to examine the claims. The result, when in favor of a claimant, was certified to the Secretary of War. There were questions, however, respecting the whole business; a further act relative to invalids was passed in February, 1793; and the Secretary did not place any of the persons, whose claims had been allowed by the judges, on the list of pensioners. It was for the purpose of having the names of one of these claimants placed on the pension list, that an application was made to the Supreme Court. In behalf of the claimant, Mr. Edmond, of Connecticut, moved for a mandamus. The motion was made in February term, 1794. I have an extract from the minutes of the Supreme Court, certified by the Clerk of the court:

"Wednesday, February 5th 1794.—Present: The honorable John Jay, Chief Justice; William Cushing, James Wilson, John Blair, and William Patterson, Associate Justices.

"Mr. Edmond, of counsel for John Chandler, a citizen of the State of Connecticut, this day moved for a mandamus to the Secretary of War, for the purpose of directing him to cause the said John Chandler to be put on the pension list of the United States, as an invalid pensioner, conformably to the order and adjudication of the honorable James Iredell and Richard Law, Esqrs, judges of the circuit court of the United States.

"The court informed Mr. Edmond, that when the trial of the cause now before the court should be finished, they would hear him in support of his motion.

"Friday, February 7, 1794.—The court proceeded to hear Mr. Edmond on the subject of his motion made on the 5th instant, and agreed to hold the same under advisement.

"Thursday, February 13, 1794.—The court proceeded to hear argument of counsel on the motion of Mr. Edmond, for a mandamus to the Secretary of War, made on Wednesday, the 5th instant.

"Friday, February 14, 1794.—The court having taken into consideration the motion of Mr. Edmond, of the 5th instant, and having considered the two acts of Congress relating to the same, are of opinion, that a mandamus cannot issue, to the Secretary of War, for the purpose expressed in said motion."

There does not appear to have been any question respecting the general power of the Supreme Court, to issue a mandamus to the Secretary of War, or any other subordinate officer. The thirteenth section of the original judicial act expressly gave the "power to issue writs of mandamus, in cases warranted by the principle and usages of law, to any courts appointed, or persons holding offices under the authority of the United States." And a motion for a mandamus was a regular mode for obtaining a decision of the Supreme Court, respecting the validity of a claim to a pension in the case stated. The decision was against the claim. Of course, a mandamus could not issue for the purpose expressed in the motion.

When such has been the unquestioned usage heretofore, is it not extraordinary that there has not been prudence enough to say less about the case of Marbury against the Secretary of State? In this case however, no writ of mandamus has been issued; although there has been a preparatory process of an inferior nature. On motion of Mr. Marbury, at the last term of the Supreme Court, a rule was made for the present Secretary of State to show cause why a mandamus should not be awarded to him for the delivery of a commission which was claimed by Mr. Marbury, as a justice of the peace in the District of Columbia. This was but a regular notice to the Secretary, of the application which had been made to the court. If no cause is shown, the next process is not a peremptory mandamus. For there are two writs of mandamus which are issued in succession; the first being the alternative, to do this, or signify reason to the contrary; and then, if no sufficient reason is signified, a peremptory writ may issue. But in the present case, neither of these writs have been awarded. By a rule to

MARCH, 1802.

Judiciary System.

H. OF R.

show cause, the court has required that notice shall be given of the purpose for which Mr. Marbury has made his appeal to them. This was not a mandate sent into the Executive cabinet, as has been represented. I have a certified copy of the rule of court, comprehending a statement of the principal allegations as they appeared in evidence. It does not make any mention whatever of the present President of the United States. But that a Secretary of State is amenable to a writ of mandamus from the Supreme Court, is a position clearly warranted by principle and precedent. A Secretary of War, under a former Administration, was not supposed to be exalted above the reach of such a process. He did not consider himself degraded by being called upon in this form where a question of right was to be decided, and a specific relief was the object. Is there anything, in a case like this, to make a difference between a former Secretary of War and the present Secretary of State? What are the facts respecting the application of Mr. Marbury? Several of them are stated in the rule of court, which has been published in a variety of papers. Mr. Marbury had been, with the advice and consent of the Senate, appointed and commissioned, by the late President of the United States, as he fully believed, to be a magistrate for the county of Washington, in this district; and he applied to the Secretary of State for the commission. On principles of ordinary courtesy it would not have been expected, but it appears to have been the fact, that the Secretary of State was so far from delivering the commission, that he did not even answer the inquiry of Mr. Marbury, when he requested to be informed whether the commission for him was signed by the late President, and sealed with the seal of the United States.

There are some other circumstances which do not appear on the face of the rule to show cause, although they are mentioned in the affidavits, of which I have certified copies. After mentioning the demand of the commission, it is stated in one affidavit, "that when the demand was made upon the Secretary of State, he referred to his chief clerk, who answered, that the commission was not in the office, and had been delivered to Mr. Lincoln, the Attorney-General."

From another affidavit it appears, that Mr. Marbury "applied to Jacob Wagner, chief clerk in the Department of State, for an affidavit respecting the commission being sealed with the seal of the United States, and that the said Jacob Wagner declined making a voluntary affidavit, alleging that he did not conceive himself at liberty to make such an affidavit, in consequence of his official relation."

The chief clerk has undoubtedly conducted as became his peculiar situation. It was to be expected that he would consult the Secretary of State on the subject. Whatever personal civility might be agreeable to the disposition of Mr. Wagner, it was not proper for him, in a case so circumstanced, voluntarily to contravene the instructions of the Head of the Department.

On such facts it may be asked, why the point in

question was so much avoided? Why was there this shunning, and changing from one to the other? Why all this dodging? Why all this consultation? Why give all this trouble about ascertaining facts, if they are doing right?

The next objection is one which has been made by a gentleman from Virginia, (Mr. RANDOLPH.) I refer now to the gentleman who came forward assuming the humble style of a shepherd, and appeared so confident that the work must be done, and well done, on his coming to the encounter with his sling and his stone, as if to evince the nature of his pious zeal, he afterwards (if I did not mistake his expressions) gave us to understand, that in a certain supposed case, he would violate the Constitution, although sworn to support it, and then throw himself on the mercy of the people for pardon.

He has contended that the act in question should be considered as unconstitutional, because of the abolition of the former circuit courts. His objection proceeds upon the idea, that in abolishing those courts, the act abolished the office of circuit judge, and thereby excluded from office the justices of the Supreme Court, and the district judges.

Upon this point it is to be observed, that there never was, before the last session of Congress, such an office as that of circuit judge of the United States. It is true, that justices of the Supreme Court, with the respective district judges, were authorized to hold what were styled circuit courts. But the justices were all appointed, commissioned and sworn into office as justices of the Supreme Court, and not as circuit judges. In like manner the district judges were appointed, commissioned, and sworn as such, and not otherwise; this was their official character. The title of circuit judge was unknown in the laws of the United States. This objection therefore fails essentially. It is founded on the supposed destruction of the office of circuit judge, which in fact, never had a legal existence, until it was created by the new judicial act.

Another objection relates to certain district judges. It has been mentioned with an air of confidence, as if those judges were deprived of office by the abolition of certain district courts. And yet it is certain, that the office of district judge is not necessarily connected with the existence of what has been styled a district court under the laws of the United States. No office of judge of a district court, by that name and designation, was ever created by any of the laws. The name, however, by which a judicial office is designated at its creation, is perhaps as essential in a legal view as the name which designates a corporation. The only judicial officers of the United States, before the passage of the new judicial act, were the chief justice and associate justices of the Supreme Court, and the district judges resident in the respective districts. This residence is one of the essential qualifications with respect to the office of district judge; and from this the official name is taken. By the original judicial act, passed in 1789, the United States were distributed into districts, and provision was made for having

in each of the districts, "one judge, who shall reside in the district for which he is appointed, and shall be called a district judge." In making these remarks, I have reference to the observations of a gentleman from Massachusetts, (Mr. BACON,) who expressed himself, more logically, perhaps, than the Virginian shepherd.

If I clearly apprehended his observations, the argument was founded on the use of the term court. He treated the subject as if court and judge were completely synonymous, proceeding upon the idea that there was a perfect identity in their meaning; and thence would have it inferred, as a necessary consequence, that you could not dismiss the court without dismissing the judge. Now, if this idea be correct, we might use "court" instead of "judge," and *vice versa*. How will this answer? Would the gentleman think proper in all cases, to substitute the word judge or judges, instead of the word court, as used in the Constitution and laws of the United States?

The Constitution, in the third section of the third article, speaks of "confession in open court." Would he agree to the substitution of "judge" for "court" in this case? Among the amendments to the Constitution you may find an article where it would be equally improper to use the "judge" as a substitute for the "court." "No fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of common law."

This too, it may be remarked, is a Constitutional recognition of the common law, if the objection about admitting it in courts can be thought relevant to the question on the present bill.

In the fourth section of the judicial act of 1789, after defining the circuits, it is said, "there shall be held, annually, in each district of said circuits, two courts, which shall be called circuit courts." As used in this place, the word courts cannot mean judges, but must mean, judicial sessions. And will any gentleman say that these sessions could not be altered, or that one of them could not be abolished, if necessary, without abolishing the office of judge?

The truth is, sir, that the word court is used in various significations, all of which have reference to objects of a judicial nature. One of its plainest significations perhaps is, a seat of justice, a place where justice is administered judicially. It has another signification, as it is used for a judicial body, or the form of a judicial institution. We have seen that it is used to signify a judicial session. And there is a further use of it, somewhat different from either of these; when, after the session has been commenced for several days, the clerk is directed by the judge to open the court; here the word does not signify either the place for administering justice, or the judge, or a judicial body, or form of institution, or session, but the sitting for a particular day. And there need be no difficulty about understanding the term, although used so variously. The true meaning in any place may be sufficiently ascertained by attending to the subject-matter. And this is a sound rule of construction.

What were the powers of a district judge, as he is legally styled, under the act by which the office was created? In his district court, sitting alone, he might take cognizance of offences, where the punishment could not exceed thirty stripes, or a fine of one hundred dollars, or imprisonment for six months. Besides this, the act gave him cognizance of suits by aliens for any tort in violation of the law of nations, or a treaty of the United States; and of suits against Consuls or Vice Consuls, of all civil causes of admiralty and maritime jurisdiction; seizure, and suits of penalties, under laws of the United States, and suits at common law in behalf of the United States, for the value of not less than one hundred dollars. Appeals and writs of error from his decisions to circuit courts, were allowed in admiralty causes, where the value in dispute was more than three hundred dollars, and in civil actions where it was more than fifty dollars exclusive of cost. This was the general jurisdiction vested in the district judges, when holding the ordinary district courts. The principal business related to causes of a maritime nature, and bonds taken of the custom-houses.

The new judicial act has been censured for abolishing the district courts in Kentucky and Tennessee. But what were these courts? The jurisdiction of the district judges, when holding the respective courts for these districts, was materially different from the ordinary jurisdiction. It extended to all causes cognizable in a circuit court, except appeals and writs of error. And for this exception, there was this decisive reason, that the district judges of Kentucky and Tennessee exercised the power both of district court and a circuit court: it would have been an absurdity to say, that either of these judges should try appeals and writs of error from his own decisions. As there was this union of district and circuit powers, it was provided, that writs of error and appeals should lie, from their decisions, immediately to the Supreme Court, in the same causes as from a circuit court to the Supreme Court, and under the same regulations.

And it is well known, that the jurisdiction which might be exercised in the circuit courts was of an extensive nature. In criminal affairs it extended to inflicting the punishment of death. In affairs of a civil nature, it extended to suits at common law or in equity, where the value in dispute exceeded five hundred dollars, and might rise above this sum without limitation. Appeals and writs of error to the Supreme Court were allowed only in causes for more than two thousand dollars in value.

What, sir, was done by the new Judicial act? It abolished the Judicial sessions that were styled district courts in Kentucky and Tennessee, and established new sessions under the name of circuit courts. But not a single Judicial office was abolished. Will it be said that the district judges of Kentucky and Tennessee do not still hold their offices, merely because they are to sit with a third judge, who resides in the circuit and is called a circuit judge? All the former powers and jurisdiction of the courts may now be exercised

MARCH, 1802.

Judiciary System.

H. of R.

in the circuit courts to be holden in those districts. For these circuit courts, it should be remembered, are different from the other courts of this name. The general power of ordinary district courts and circuit courts may both be exercised in the courts for the sixth circuit. Where the Judicial powers remain so essentially the same, will gentlemen contend, that this change of the mere name of the courts has abolished the office of those judges? The new Judicial act has drawn a clear distinction between the first five circuits and the sixth. By the seventh section of the act, it is provided that there shall be in each of the aforesaid circuits, except the sixth circuit, three judges of the United States, to be called circuit judges, one of whom shall be commissioned as chief judge; and that there shall be a circuit court of the United States, in and for each of the aforesaid circuits, to be composed of the circuit judges within the five first circuits respectively. With respect to the circuit which includes Kentucky and Tennessee with the district of Ohio, it is provided that

"There shall be appointed in the sixth circuit a judge of the United States, to be called a circuit judge, who, together with the district judges of Kentucky and Tennessee, shall hold the circuit courts hereby directed to be holden within the said circuit; and that whenever the office of district judge, in the districts of Kentucky and Tennessee, respectively, shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit."

And, by the twenty-fourth section of the act, it is provided:

"That the circuit judges to be appointed for the sixth circuit aforesaid, severally, shall be invested with, possess and exercise all and singular the powers now vested by law in the district judges of the United States."

As the act required from the district judges of Kentucky and Tennessee additional duties, although of precisely the same nature with those which they performed before, an addition was made to their compensation. But is there any power which either of those judges might before exercise in his official capacity, from which he is now excluded? This is so far from being the case, that even the circuit judges, who may be appointed to succeed the present judges in Kentucky and Tennessee, whenever their offices respectively shall become vacant, are severally authorized to exercise all the powers vested in the district judges of the United States.

Nor is this last a useless provision. For a district judge, although not sitting in what is legally styled the district court, may exercise various powers in virtue of his judicial office. For example, he may administer the oaths of office, and take depositions under the laws of the United States, and issue writs of habeas corpus, in which case he may decide judicial questions of a very interesting nature. He may also issue commissions of bankruptcy; and in such case may cause a jury to be empanelled for inquiring into facts before him, and after attending to the various proceedings, he

may finally decide, as to allowing the bankrupt a certificate of discharge.

As to the question that arises under the Constitution, let me now ask what is the office of a judge of the United States? Is it not an authority or legal right to exercise the power, and to receive the compensation appertaining to a judicial employment? Upon this construction you cannot apply the terms court and office indiscriminately, and say that they have each the same effect. Is not this idea of the judicial office correct? Permit me, sir, considering its bearing on the present subject, to repeat the definition. The office of judge under the Constitution of the United States is an authority to exercise the power, and to receive the compensation appertaining to a judicial employment. An authority to exercise judicial power, a legal right to receive a determinate compensation, are of the essence of the office. While the judge is not divested of either of these essential attributes of his office, the judicial sessions may be altered, new names may be given them, and the jurisdiction may be increased or diminished. But this power of modifying the courts and varying the judicial duties, may not be exercised in such a manner as to produce the effect of depriving the judge of office by circuitous operation. This would be an abuse of power, which ought to be condemned as contrary to the spirit of the Constitution. The letter of the Constitution does not permit you, while a judge behaves well, to divest him at once of every species of jurisdiction. Nor indeed does it permit you wholly to divest him of the jurisdiction appropriate to his office.

With respect to jurisdictions, the Constitution, if you will attend to it, will be found to have marked one great distinction. Some of the judicial officers of the United States are to have authority for deciding in the last resort. Others are to exercise a subordinate power; and their decisions are subject to the revision of a superior tribunal. This distinction is important in jurisprudence; and very different qualifications might be judged requisite in appointing persons to offices so distinguished from each other. The Constitution establishes no other distinction of courts than that of supreme and inferior. It has made no distinction of grades between the various inferior courts which may be established by Congress. The jurisdiction of them all has the character of subordinate. And while you assign only subordinate power to a judge of the inferior grade, you observe the Constitutional distinction respecting judicial offices. The essential difference between them is in the jurisdiction. The decisions of judges invested with none but subordinate jurisdiction, are liable to be controlled by the supreme judicial authority. The justices composing the Supreme Court are invested with jurisdiction in the last resort; their decisions are above all judicial control. Vary, therefore, the judicial sessions and the judicial duties as may be found expedient; yet, if you do not change the jurisdiction from subordinate to supreme, the essential qualifications and rights of the judges of inferior courts may be

said to remain inviolate, according to the principles of the Constitution.

Before the passage of the new judicial act, the district judges of Kentucky and Tennessee were authorized to exercise judicial power in an inferior court. For this they still have authority; and their jurisdiction, retaining its subordinate character, is perfectly distinct from that of the Supreme Court.

By the Constitution, all the judges of inferior courts are to hold their offices by the same tenure as those of the Supreme Court. In this respect there is no distinction between them; and the principle has never been infringed by any act which has yet been passed concerning the courts of the United States.

The district judges, it may be recollected, were invested with original jurisdiction in admiralty and maritime causes, which might ultimately be removed into the Supreme Court by appeal. But what business of this kind was to be expected in Kentucky and Tennessee? Although officers of the customs have been appointed, I do not see a single suit mentioned in the report, as coming from those States.

Mr. DAVIS made some observations as to the reason of there being nothing from them seen in the returns.

Mr. DANA.—However that might be, so little business is done there that considerable salaries are allowed to the officers in addition to their fees. From all this I would only infer, that there cannot be in that quarter of the Union, many custom-house bonds, nor many seizures under the laws of trade, nor many prizes for the cognizance of any court. It may be presumed that district courts were established there from civility to those States, which had been recently admitted into the Union; for as to the principal business of ordinary district courts there could be none to require them. It was, therefore, no injury to the people of those States to modify the courts there according to the new judicial act. The business, whatever it was, has been transferred to a circuit court, which is to be held in each of the districts within the circuit. In this court the district judges are to sit, and with a circuit judge, are to have cognizance of every cause of whatever nature which was before cognizable by them, sitting in what were styled district courts. The judicial sessions have been varied; but no judicial office has been taken away. The jurisdiction to be exercised by the judges is, in its nature, the same as before; and the objects of it are as before, in all such causes as are cognizable in the ordinary district and circuit courts. The judges continue to hold their offices by their original titles; they remain authorized to exercise judicial power in an inferior court, and are legally entitled to receive their compensation, which has not been diminished, but increased.

There is one other argument in favor of the proposed repeal. It is in substance, that the act should be repealed to manifest the power of Congress over the Judiciary department.

In this view of the question, the bill on the table has been zealously supported. It is certainly a

singular principle of legislation that you should legislate merely to show your power. But even if the bill should be passed, will it manifest the necessity or propriety of your exercise of power in the present instance? Although it may prove that you are in possession of power, will it prove your Constitutional right to displace the judges?

"During good behaviour" is the tenure by which every judge of the United States holds his office. If the idea were to be expressed in a negative form, it may be said no judge shall be divested of his office while he behaves himself well. Here the general sentiment is the same as when it is said "the judges shall hold their offices during good behaviour."

If the term *hold* has any appropriate or legal meaning, so the term *divest* has its appropriate meaning on the other part. And when it is said a person shall hold an office or an estate, it is equivalent to saying that he shall not be divested of it. The question then is, whether the present bill goes to divest the circuit judges of their offices?

Will gentlemen say that this is not the object? What else can they mean? Every part of the bill is calculated for this purpose. It is the very essence of a Judicial office under the Constitution to be entitled to exercise Judicial power, and receive a regular compensation. But this bill seizes on the power and the salaries at once, and deprives the judges of both. It is not the act of the last Congress which directed that certain Judicial sessions should cease, while the judges were to exercise their official power in the same causes as before, although they were to hold their courts according to a new arrangement; their salaries, too, were not only continued, but diminished. By this bill you now strike at the Judicial sessions, at all the power of the judges, at all their services, and the whole are to fall together.

Are we to be told that this bill is directed against the office, and that in this view it is not infraction of the Constitution to pass it? Will gentlemen say that the procedure does not touch the judge, but merely his office? How is it possible to maintain such a position? It has hitherto been understood, sir, that a judge is a person having a Judicial office. If the office is destroyed, although the man may exist, the judge is no more.

We have been told by a gentleman from Virginia (Mr. GILES) that the term *hold* is technical, having reference to a person holding and a person granting. He, as I understood him, would have it believed that the President of the United States is the person granting, and that the judges hold their offices of the President. To support this doctrine, the gentleman reminded us that the President, according to the Constitution, has power to nominate, and, by and with the advice and consent of the Senate, appoint the judges and other officers, and to commission all of them. So, too, a gentleman from Vermont (Mr. I. SMITH) has contended that the power of appointment, as vested in the President, implies the power of removal, and, therefore, that the expression "during good behaviour," having reference to this power, is to

MARCH, 1802.

Judiciary System.

H. OF R.

guard the judges against being removed by the President.

As to the power to remove from office, I believe it is no where in the Constitution given explicitly to the President, with respect to any officer, although of his sole appointment; and it is to be remembered that the Senate have a voice with the President in appointing the judges of the United States. When the Department of State, of the Treasury, and of War, were established, at the first session of the first Congress, the Secretaries, by the terms of the act respecting them, were declared liable to be removed from office by the President. By the Judicial act passed in 1789, the marshals were removable at his pleasure. As the principle was recognised in this manner by acts of Congress, the power of removing other Executive officers has been considered as left to the President, wherever there is no prohibition. But the power of appointment does not, in its nature, comprehend the power of removal. These powers are not the same in essence. They are so different from each other as to be, in some cases, very properly vested in different persons. The marshals in the several Judicial districts may appoint deputies; but these deputies are removable from office at the pleasure of the judges. Under the Confederation, all officers of or under the rank of Colonel, for the Army of the United States, were appointed by authority of the respective States, but were commissioned by Congress, and removable by sentence of a court martial. As it respects Executive officers, however, it may be said that the President should possess the power of removal, because he is supposed to have the whole Executive power, and is to take care that the laws be faithfully executed by those officers. Although I do not question the general propriety of such reasoning, yet I may ask, whether Congress may not regulate the tenure of any Executive office which they establish? Where is the clause in the Constitution to restrain them from doing this? But after what has been done with respect to the heads of the several Executive departments, if the law establishing any Executive office is silent on this subject, the power of removal may be considered as resulting to the President by admitted construction. It is no part, however, of the Executive power, as such, nor does it concern the proper office of the President to remove any of the judges of the United States.

The gentleman from Virginia would have us believe, that the tenure "during good behaviour," as mentioned in the Constitution, has reference solely to the President of the United States. He has attempted to show, by his remarks on the word hold, that the judges hold their offices under the President. Now, if this doctrine can be completely refuted, the argument fails. Let us examine the Constitution. If the terms "shall hold their offices during good behaviour," as used in the first section of the third article, are to be understood according to the use of terms in other parts of the Constitution, it is evident to demonstration, that the judges hold their offices, not under the President, but under the United States. In article first,

section third, clause seventh, speaking of judgment in cases of impeachment, mention is made of "disqualification to hold any office of honor, trust, or profit, under the United States." In the same article, section sixth, clause second, "no person holding any office under the United States, shall be a member of either House during his continuance in office." In the same article, section ninth, clause seventh, "no person, holding any office of trust under them (the United States) shall, without the consent of the Congress, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State." In article second, section first, clause second "no person holding an office of trust or profit under the United States, shall be appointed an elector." In article sixth, clause third, "no religious test shall ever be required as a qualification to any office of public trust under the United States." Whenever the Constitution speaks of holding an office, and mentions under whom, it is invariably mentioned as being holden under the United States. The officers themselves are uniformly styled officers of the United States, and not of the President. In article second, section second, clause second, mention is made of judges and other officers of the United States. In the same article, section third, the President "shall commission all the officers of the United States." In article sixth, clause third, "all Executive and Judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution." The third article says, "the judges shall hold their offices during good behaviour." And the second article says, "the Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years." If all offices are holden under the President, under whom does he hold his office? As it respects the power under which their offices are holden, the Constitution speaks of the judges and of the President, in precisely the same terms. According to the manifest principles of the Constitution, they all hold their offices under the United States.

In England the principle is different. There everything, every office, all landed property, public and private, is supposed to be holden of and under the Monarch, because he is regarded as the Sovereign. There the doctrine of feudal tenure prevails; and, according to this, the whole realm is considered as holden of the Monarch. But it is a novel opinion, that, notwithstanding the express language of the Constitution on this subject, the feudal prerogatives of the British Monarchy are to be adopted as the rule for construing the powers of the President of the United States. I had before supposed, that the principle of tenure in this country, since the establishment of independence, was essentially different from that in England. I had supposed that the doctrine of allodial tenure was the true doctrine here, and that the landed proprietors in the United States were regarded, by the Constitution and laws, as the lords of the soil. Such I know is the declared principle of tenure in one of the States. Is it to

be now assumed as a rule of construction in this House, that the President of the United States, like the Monarch of Great Britain, is clothed with sovereign power? Where then is the Sovereignty of the United States?

The Sovereign in this country is not the President, but the great body of the citizens, the whole people of the United States. This is the import of the Constitution. The result of the principle is, that all offices are holden under the people, who have ordained a Constitution, in order to establish justice, and have declared it to be their will, that the judges shall hold their offices by the tenure of good behaviour. The first words in the Constitution, "We the people of the United States," and every succeeding part of it, may be cited to prove, that all the powers of this Government have originated from the people, and that the offices of those in power are all holden under the people as sovereign.

Gentlemen have dwelt on the word services, as used in the Constitution, with respect to the judges: to whom are these services to be rendered? Are they to be rendered to the President, as feudal lord paramount? Or are they to be rendered to the United States, for the public good? Whose judges are they? By whose authority do they sit in judgment? In administering justice the judges of the United States render their services to the people.

In England the principle and language of the Government are different. From the Crown are supposed to be derived power, honor, office, and privilege. According to the feudal principle, the Monarch was regarded as the General, the Legislator, and the universal Magistrate of the realm. Even to this day the style of acts of Parliament has reference to the Legislative powers of the Crown. "May it please your Majesty, that it be enacted, and be enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords and Commons in Parliament assembled." His Majesty's army, his Majesty's Parliament, his Majesty's judges, his Majesty's officers, his Majesty's revenue, the accustomed forms of language, all have reference to the feudal prerogatives of the Monarch. Are gentlemen disposed to imitate all this with respect to the President? And must we now learn to say, the President's army, the President's judges, the President's officers?

If gentlemen are not prepared to go so far as this, the argument about the doctrine of tenure, which has been founded upon the supposed technical import of the term hold, must be given up. And if they stop short of attributing sovereign power to the President, and should wish to avail themselves of the doctrine of subinfeudation, their British precedents utterly fail them; for it was the law of England, as early as the reign of Edward the First, that in cases of feoffment the feoffee should hold only of the chief lord of the fee, and has ever since been the law. Any idea of regarding the President as a sort of intermediate lord, therefore, is inadmissible in the present case.

Indeed, the whole argument drawn from the

practice under the British monarchy is inconclusive, even upon the principles of that Government. It is contended, in favor of the present bill, that the same power which can create a Judicial office, may destroy it at pleasure, and thereby deprive the judge of his office. And thence gentlemen would have it inferred, that the office of circuit judge, which was established by act of Congress, may be rightfully abolished by enacting the present bill. But the Constitution has directed, that the judges of the inferior courts, as well as those of the Supreme Court, shall hold their offices during good behaviour. Gentlemen, therefore, give to this part of the Constitution a construction accommodated to their own purposes, and say, that it has reference solely to the President's power of appointing and removing officers, and not to the power by which offices may be established. This is the scope of the argument. Let us now try it according to English principles, on which the gentlemen so much rely for the support of the cause.

In England, according to Sir William Blackstone, the "King is considered as the fountain of justice. The Judicial authority has immemorially been exercised by the King or his substitutes. All jurisdiction of courts are either mediately or immediately derived from the Crown." Of consequence, the Judicial proceedings are held in his Majesty's name, and all delegations of Judicial authority are regarded as grants flowing from the royal prerogative. The whole of the royal prerogative is considered as a family estate, descendable to the heirs of the blood royal. It participates of the nature of an entailment; and the Monarch, for the time being, is accordingly regarded as having an estate in the prerogative but for his own life. It is, too, an acknowledged principle, that a person who has an estate only for his own life, cannot make a grant of any part of it which shall be valid for a longer time. If he should make a grant for the life of another, yet, upon his decease, the person next in expectancy becomes entitled to the whole estate. This idea serves to explain the doctrine, that all Judicial processes were abated, and all commissions discontinued by the demise of the Crown. These, and other public inconveniences, resulted from the principle, that a reigning monarch had an estate in the prerogative but for his own life, and that he could not alienate any part of it to the prejudice of his lineal heirs. The interposition of Parliament was therefore esteemed requisite to enable the King to make grants of Judicial authority, which should be valid after his decease.

These, indeed, are not the doctrines of our Constitution. But, if they were, they would not authorize the measure now proposed. In England, the power which erects courts of judicature, and establishes Judicial offices, cannot abolish the offices at pleasure. This power is uniformly acknowledged to be controlled in every case where the judges hold their offices during good behaviour. Speaking of the King, Sir William Blackstone says: "He has alone the right of erecting courts of judicature." This clearly results from

MARCH, 1802.

Judiciary System.

H. OF R.

his being considered as the fountain of justice. It is at the same time within his power to determine what number of judges shall compose any of the courts. This is but conformable to the principle, that he is the fountain of honor and of office. It is, in fact, his acknowledged prerogative, to create Judicial offices by his grants, which are matter of public record. These grants, or letters patent, must pass by bill, prepared by the attorney and solicitor general. And yet it is indisputably the law of England, that the offices of the judges cannot be abolished at pleasure by the same power which established them. The offices cannot be abolished while the judges behave themselves well. This is settled by the statute, (12 and 13 William III. c. 2.) "For the farther limitation of the Crown, and better securing the rights and liberties of the subject." From its relation to the Crown, this statute, of course, forms a part of what is called the Constitution of England. There is, therefore, a strong analogy between the two cases. After limiting the succession to the Crown in the Protestant line, the statute contains various provisions which were deemed of importance to the liberties of the realm. One relates to the judges; it directs that their commissions, after the limitation should take effect, be made *quamdum bene se gesserint*, and their salaries ascertained and established.

Since that time it has been the settled principle, that the power by which the offices of the judges are established, cannot constitutionally abolish them during the life of the judges, respectively, unless there should be a forfeiture by breach of the condition of good behaviour. This gives to the judges a title to exercise Judicial power, and to receive determinate salaries. But the provisions respecting the judges were not deemed sufficient; for the King, having an estate in the prerogative but for his own life, was not considered as having the power to make a valid grant of any part of the prerogative of his successor. A subsequent statute was therefore passed, (1 George III., c. 23.) in relation to the commissions and salaries of the judges. By this statute provision was made, that the commissions of judges should be in full force during their good behaviour, notwithstanding any demise of the Crown, and that their salaries should be paid so long as the patents or commissions should continue in force; and the funds were designated out of which the salaries were to be paid after the King's demise.

The Constitution of the United States was, undoubtedly, framed with a view to the provisions of the two statutes. But there is reason to believe it was intended to give to the judges of the United States a greater stability in office than it secured to the English judges. In England, according to both the statutes, any of the judges may be removed, upon the address of both Houses of Parliament. The amount of this is, that the two Houses of the Legislature, together with the Executive, may divest a judge of his office. There is no such provision in our Constitution; but this omission did not result from inattention to the subject. From a message of the first President of

the United States to the House of Representatives, in the year 1796, it appears that he had deposited the Journal of the General Convention in the office of the Department of State. The President referred the House to a vote which appeared on that Journal respecting the power of treaties, and alluded to the security of the smaller States under the Constitution, which he considered as being the result of a spirit of mutual concession. On examining the Journal, it is found that a motion was made in the Convention to this effect, that the judges might be removed by the Executive, on application of the Senate and House of Representatives. On taking the question by States, the motion was explicitly rejected. And yet, if the present bill should be passed by both Houses of Congress, and presented to the President, is not this, in principle and effect, an application to the Executive for the removal of the judges?

Evidence too may be found, which goes to disprove the doctrine, that the tenure during good behaviour has reference solely to the power of the President, with respect to appointments and removals. Among the documents deposited in the Office of State, there is a printed draught of a form of Government for the United States. From this it appears that the Convention had agreed that the judges of the Supreme Court should be appointed by the Senate, although they were to be commissioned by the President, and should hold their offices during good behaviour. In this case, the terms "during good behaviour," could not be intended to guard the judges against any supposed power of the President to remove, for he had not the power to appoint. These facts any member of this House may ascertain for himself at the Office of State. They are decisive as to the opinion entertained by the General Convention in 1787, and prove it to have been the reverse of the construction now attempted to be given to the Constitution.

Much has been said about the principle of responsibility, as if that could vindicate the passage of the present bill. The true principle upon this subject, sir, is that of personal responsibility. But where do the gentlemen find their doctrine of a collective responsibility? The President is personally responsible; but not the Executive authority, as such, for this is one of the three integral departments of Government. The members of Congress are personally responsible; but not the collective body. So the judges, as individuals, are responsible; but there is no such thing in the Constitution as a collective responsibility of the whole body of judges.

The President, indeed, may put his negative upon acts of Congress. The Senate may refuse to advise and consent to an appointment where the President has made a nomination. The Judiciary may say, that unconstitutional acts are not obligatory. But these powers of the respective departments in relation to each other, are not what is meant by this principle of responsibility. The President is responsible on impeachment and at elections. The members of Congress are responsible at elections, if not on impeachment. The

H. OF R.

Judiciary System.

MARCH, 1802.

judges individually are responsible on impeachment, where they may claim the right of justifying themselves against any accusers; as to them, there are no periodical elections. The principle of responsibility is applicable where persons can meet and answer the charges which may be made against them for their official conduct. This may be done by gentlemen, if they think proper, at elections, particularly where such proceedings are customary; they may know the time and place for hearing, and for deciding as to their conduct; and they may prepare their answers to charges, however vaguely exhibited. In cases of impeachment, there are formed articles of charge, a regular trial, and ample opportunity for defence. But, upon the plan of the present bill, the judges are to be divested of their offices, without being either accused or heard. The bill strikes at the collective body, under a vague idea of their being responsible; and yet there is not a single charge against them, and if there were, they have no opportunity of answering for themselves, before the men who undertake to decide against them.—There is nothing in the Constitution to warrant such a responsibility as this.

The gentleman from Vermont, (Mr. I. SMITH,) spoke of the acknowledged power of impeachment as rendering it vain to talk of the independence of judges. He appeared to consider such a responsibility as destructive of this independence. Another advocate of the bill, a gentleman from Virginia, (Mr. RANDOLPH,) spoke of the responsibility of impeachment as amounting to nothing in practice. To arrive at a just conclusion, it may be proper to take an intermediate course between these two extremes of opinion. When we speak of an independent Judiciary, the correct meaning is, that this department should not be particularly dependent for existence on the Executive or on the Legislature. This relative independence is perfectly consistent with the principle of personal responsibility. With respect to the departments of Government, their general independence of each other is a common security of them all. But the several judges, individually, ought to be responsible on impeachment for ill behaviour. The mere act of impeachment does not destroy the reputation. A person might be impeached for party purposes; officers have been dismissed on this account; but no man can say, with justice, that they merit reproach merely for this.

It is a decisive reason against admitting the power now claimed over the Judiciary, if they are to judge whether the acts of Congress are conformable to the Constitution. This, however, has been denied by several of the gentlemen who advocate the present bill. It is said, that this question must be decided by Congress. And gentlemen would now decide, for the first time, that the Constitutional validity of the acts of Congress is to be determined only by the result of elections; and that the judges, as composing a Constitutional department, have nothing to do with such questions. We say, if Congress can pass any acts at pleasure, and there can be no judicial opinion as to their validity, Congress might destroy

the Supreme Court altogether. As to this power of destroying judges, there is no difference, in the principle, between those of the Supreme and those of inferior courts. The offices of the justices of the Supreme Court have been established by act of Congress. That act may be totally repealed as well as the act now in question. The present bill, therefore, in its principle, is a claim of power in Congress to divest the judges of the Supreme Court of their offices. This is a more serious claim of power than has been advanced before. Whatever may have been said of former administrations, they never claimed to command the whole powers of the Government through the Legislative body. Whatever might be said on the other topics, whatever questions might be made about the constitutionality of measures, there was one principle constantly admitted; and that was, to consider the judges of the United States, while behaving well, as placed beyond the reach both of the Legislature and the President. This gave a security to all parts of the community, against unconstitutional measures. For the judges, being independent of the Legislative and Executive departments, might, in the faithful discharge of their duty, refuse to give effect to acts contravening the Constitution. It was not pretended, that Congress, with the President, were authorized, at pleasure, to deprive the judges of the means of subsistence, by abolishing their offices.

It is for the judges faithfully to administer justice according to the Constitution and laws. No menacing power should exist to bias their decisions by the influence of personal hopes and fears. They are undoubtedly to give effect to acts of Congress in pursuance of the Constitution. But the Constitution, which granted to Congress their Legislative powers, is the supreme law; and the judges, from the very nature of the case, must pronounce on the validity of acts of Congress, as compared with the imperative provisions of the Constitution. When they are called to decide a cause, if they find on the one side an act of Congress, and, on the other, the Constitution of the United States, when they find these placed in opposition to each other, what is their duty? Are they not to obey their oath, and judge accordingly? If so, they necessarily decide, that your act is of no force; for they are sworn to support the Constitution.

This is a doctrine coeval with the existence of our Government, and has been the uniform principle of all the constituted authorities. The contemporaneous use of terms, the undisputed practice under the Constitution, have settled the principle. These determine the sense of the Constitution, by which we should now be guided.

Sir, it is not a new opinion in this country, that the judges have authority to decide against an act of Congress, if unconstitutional. This was the opinion which was practised upon in the year 1792. A question arose from the act of the 23d of March, 1792, respecting invalids. The act had been mentioned already. The judges in the three circuits determined it was unconstitutional, and communicated their opinion to the first President

MARCH, 1802.

Judiciary System.

H. OF R.

of the United States, who laid the subject before Congress.

From the journals of the House it appears, that the President sent a Message, on the 16th of April, 1792, with a statement of the opinion of the judges attending the circuit court in New York.

The statement, as sent to the House by the President, has been found in the Clerk's office. It is a copy, certified by Tobias Lear, Secretary to the President of the United States.

"At a stated circuit court of the United States, held for the district of New York, at the city of New York, on Thursday, the fifth day of April, one thousand seven hundred and ninety-two, at ten of the clock anti-meridian:

"Present—The honorable John Jay, Esq., Chief Justice of the United States, the honorable William Cushing, Esq., one of the associate justices of the Supreme Court of the United States; the honorable James Duane, Esq., judge of the district of New York.

"The court proceeded to take into consideration the following act of the Congress of the United States, viz: 'An act to provide for the settlement of the claims of widows and orphans, barred by the limitations heretofore established, and to regulate the claims to invalid pensions.'

The act, which is that of the 23d of March, 1792, is then recited at full length. It is unnecessary to repeat it now; and I will proceed to the opinion of the court.

"The court were thereupon unanimously of opinion, and agreed,

"That, by the Constitution of the United States, the Government thereof is divided into three distinct and independent branches; and that it is the duty of each to abstain from, and oppose encroachments on either.

"That neither the Legislative nor the Executive branches can constitutionally assign to the Judicial any duties, but such as are properly judicial, and to be performed in a judicial manner.

"That the duties assigned to the circuit courts, by this act, are not of this description, and that the act itself does not appear to contemplate them as such; inasmuch as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the Secretary at War, and then to the revision of the Legislature: whereas, by the Constitution, neither the Secretary at War, nor any other Executive officer, nor even the Legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.

"As, therefore, the business assigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be considered as appointing Commissioners, for the purposes mentioned in it, by official instead of personal descriptions.

"That the judges of this court regard themselves as being the Commissioners designated by the act, and therefore as being at liberty to accept or to decline that office.

"That, as the objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress, and as the judges desire to manifest, on all proper occasions and in every proper manner, their high respect for the National Legislature, they will execute this act in the capacity of Commissioners."

The remainder of the opinion relates to extend-

ing the session of the court for the term of five days, and need not be read at this time. The judges agreed, that the Legislature had a right to extend the session, and that the direction of the act, as to this particular, ought to be observed.

On the 21st of April, 1792, the President sent another Message, with the copy of a letter, communicating the opinion of the judges attending the circuit court in Pennsylvania.

I have the copy as laid before this House. Permit me to read it:

"PHILADELPHIA, April 18, 1792.

"SIR: To you it officially belongs, to 'take care that the laws' of the United States 'be faithfully executed.' Before you, therefore, we think it our duty to lay the sentiments which, on a late painful occasion, governed us with regard to an act passed by the Legislature of the Union.

"The people of the United States have vested in Congress all Legislative powers 'granted' in the Constitution.

"They have vested in one Supreme Court, and in such inferior courts as the Congress shall establish, 'the Judicial power of the United States.'

"It is worthy of remark, that, in Congress, the whole Legislative power of the United States is not vested. An important part of that power was exercised by the people themselves, when they 'ordained and established the Constitution.'

"This Constitution is 'the supreme law of the land.' This supreme law, 'all judicial officers of the United States are bound, by oath or affirmation, to support.'

"It is a principle important to freedom, that, in Government, the Judicial should be distinct from, and independent of the Legislative Department. To this important principle the people of the United States, in forming their Constitution, have manifested the highest regard.

"They have placed their Judicial power not in Congress but in courts. They have ordained that, the 'judges' of those courts 'shall hold their offices during good behaviour;' and that, 'during their continuance in office, their salaries shall not be diminished.'

"Congress have lately passed an act 'to regulate, among other things, 'the claims to invalid pensions.'

"Upon due consideration we have been unanimously of opinion, that, under this act, the circuit court held for the Pennsylvania district could not proceed:

"1. Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States, the circuit must consequently have proceeded without Constitutional authority.

"2. Because, if, upon that business, the court had proceeded, its judgments (for its opinions are its judgments) might, under the same act, have been revised and controlled by the Legislature, and by an officer in the Executive Department. Such revision and control we deemed radically inconsistent with the independence of that Judicial power which is vested in the courts, and consequently with that important principle which is so strictly observed by the Constitution of the United States.

"These, sir, are the reasons of our conduct. Be assured, that though it became necessary, it was far from being pleasant. To be obliged to act contrary, either to the obvious direction of Congress, or to a Constitutional principle, in our judgment equally obvious, ex-

cited feelings in us, which we hope never to experience again. We have the honor to be, with the most perfect consideration and respect, sir, your most obedient and very humble servants,

"JAMES WILSON,
"JOHN BLAIR,
"RICHARD PETERS.

"The President of the United States."

On the 7th of November, 1792, the President sent a further Message, communicating the opinion of the judges attending the circuit court in North Carolina. Their opinion was against the act as being unconstitutional. The reasons for this opinion were given in a letter addressed to the President. I have before me the copy of the letter as it was sent by the President to this House. It is dated "Newbern, North Carolina, June 8, 1792." It is signed "Ja. Iredell, one of the associate justices of the Supreme Court of the United States; Jno. Sitgreaves, Judge of the United States, for the North Carolina district."

The reasons for their opinions against the act are stated at considerable length. The opinion of these judges is substantially to the same effect with that of the judges in the two other circuits. A part of the letter may be read, notwithstanding the lateness of the hour. In assigning their reasons for being against the act as unconstitutional, it is the first position :

"That the Legislative, Executive, and Judicial departments are each formed in a separate and independent manner, and that the ultimate basis of each is the Constitution only ; within the limits of which each department can alone justify any act of authority."

The question, if any question could be made about the authority of the judges to decide respecting the unconstitutionality of the acts of the Legislature, was now placed directly before Congress and the first President of the United States. What was done by them on this subject? Another act relative to invalids was passed by Congress and approved by the President on the 28th of February, 1793. This act prescribed new regulations for ascertaining the claims to invalid pensions. And the third section directed that no person who was not on the pension list before the 23d of March, 1792, should be entitled to a pension unless he complied with these regulations. It contained, however, a clause for saving to all persons their rights, founded upon legal adjudications under the former act. And there is one provision in the same section which is particularly observable as it respects the present question. It is in these words :

"It shall be the duty of the Secretary at War, in conjunction with the Attorney General, to take such measures as may be necessary to obtain an adjudication of the Supreme Court of the United States on the validity of any such rights, claimed under the act aforesaid, by the determination of certain persons styling themselves Commissioners."

The force of this provision will be instantly perceived on recollecting that the judges in some of the circuits had agreed to act as Commissioners under the act of the 23d of March, 1792.

We will now attend to what was done in con-

sequence of the injunction laid on the Secretary of War by this second act respecting invalids. From the Journals of the House it appears that the Secretary made his report to Congress on the 21st of February, 1794. The original report has been filed in the Clerk's office.

WAR DEPARTMENT, Feb. 21, 1794.

The Secretary of War respectfully reports to the Senate and House of Representatives of the United States :

That, by the act passed the last session of Congress, entitled "An act to regulate the claims to invalid pensions," it was made the duty of the Secretary at War, in conjunction with the Attorney General, "to take such measures as might be necessary to obtain an adjudication of the Supreme Court of the United States on the validity of the rights claimed by invalids (under the act, entitled 'An act to provide for the settlement of the claims of the widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions,' passed March 23d, 1792,) by the determination of certain persons, styling themselves Commissioners."

That, in obedience to the said act, an unsuccessful attempt was made in August last, to obtain an adjudication of the Supreme Court upon the claims of the said invalids, as will appear by the report of the Attorney General, herewith submitted, No. 1.

That such adjudication, however, has been recently obtained, and that the determinations of the Commissioners were held to convey no legal rights to the invalids claiming under them, as will appear by the report of the Attorney General, herewith annexed, No. 2.

All which is humbly submitted to the Senate and House of Representatives of the United States.

H. KNOX, Secretary of War.

No. 1.—Copy of a letter from the Attorney General of the United States to the Secretary of War, dated
PHILADELPHIA, August 9, 1793.

SIR : In consequence of our arrangement, I moved the Supreme Court of the United States on Tuesday last for a *mandamus* to be directed to you, as Secretary of War, commanding you to put on the pension list one of those who had been approved by the judges, acting in the character of Commissioners. The decision of one case would have involved every other. But two of the judges having expressed their disinclination to hear a motion in behalf of a man who had not employed me for that purpose, and I being unwilling to embarrass a great question with little intrusions, it seemed best to waive the motion until some of the invalids themselves should speak to counsel. To this end I beg leave to suggest the propriety of a letter from your office to such of the invalids as have been certified to be proper for pensions, and perhaps it may be well to intimate the turn which the affair has taken, and I have just mentioned. It was very unlucky that, although one of the invalids was in court when I made the motion, and heard the difficulty, he omitted to notify himself to me until the court had risen, and it was too late. I have the honor to be, &c.,

EDM. RANDOLPH.

No. 2.—Report of the Attorney General to the Secretary of War, dated

PHILADELPHIA, February 17, 1794.

SIR : I have to report that, in consequence of measures taken to obtain a decision of the Supreme Court

MARCH, 1802.

Judiciary System.

H. OF R.

of the United States upon the validity of the adjudications of certain persons styling themselves Commissioners under the act of the 23d of March, 1792, the court has this day determined (in the case of *Yale Tod*) that such adjudications are not valid.

I have the honor to be, with great regard, sir, your most obedient servant,

WM. BRADFORD.

The SECRETARY OF WAR.

We here find that the authority of the judges to decide questions arising under the Constitution was fully recognised. The first President of the United States, the Congress, and the Judges of the Supreme Court, all sanctioned the opinion by their official proceedings. And it is well known that many of them were members of the General Convention or of State Conventions, which agreed to the Constitution.

In 1796, the authority of the judges to decide as to the constitutionality of acts of Congress was further recognised. A question respecting the constitutionality of the act laying a duty on pleasurable carriages, was brought forward from Virginia. The Attorney General of the United States for that district had filed a bill in the circuit court against Daniel Lawrence Hylton for not paying the duties on a number of carriages, as required by the act. The material facts in the cause were argued. The defence was, that the act was unconstitutional. Judgment was rendered against the defendant in the circuit court. The cause was carried to the Supreme Court of the United States by writ of error. I have a certified extract from the minutes of the Supreme Court, stating the whole proceedings before that court. The error, for which a reversal of the judgment of the circuit court was prayed, was assigned to be, "That judgment ought to have been rendered for the defendant and not for the plaintiffs; whereas the same was rendered for the plaintiffs, there being no law binding on the citizens of the United States upon which the judgment could be rendered." This assignment of error shows that the constitutionality of the act of Congress was the point in controversy. But if there could be any doubt as to the fact, it is clearly established by an agreement which appears on file. It is in these words:

VIRGINIA January 25, 1796.

"I agree that the writ of error, '*Daniel L. Hylton vs. the United States*,' which is now depending before the Supreme Court of the United States, be heard and determined at the approaching session of that court. I certify this agreement, that the cause may not be continued on my account; my object in contesting the law upon which the cause depends, being merely to ascertain a Constitutional point, and not by any means to delay the payment of a public duty.

"DANIEL L. HYLTON."

The Supreme Court affirmed the judgment of the circuit court in this cause, and thereby decided in favor of the validity of the act of Congress. Three gentlemen were engaged to assist the Attorney General as counsel in behalf of the United States. One of these gentleman was from Vir-

ginia; another from Pennsylvania, and another from New York. It was a cause of peculiar interest and expectation. The Constitutional validity of an act of Congress for raising revenue, was to receive a final decision before the highest court in the United States.

On examining the annual statement of receipts and expenditures for 1796, it appears that the sums paid to the three gentlemen for their professional assistance, amount to nearly a thousand dollars. (The precise amount was nine hundred and sixty dollars, sixty-six cents.) There is no room to question that all this was well understood at the time. The statement was printed and laid before Congress. The payment to the gentleman from Virginia, (whose name is first mentioned in the statement) is expressly said to be "for his fees as agreed with the Attorney General, for arguing the cause before the Supreme Court in February term, 1796, respecting the constitutionality of the act imposing duties on carriages."

You here find the principle was so fully admitted, that the constitutionality of a revenue law was submitted to the decision of the Supreme Court; and, with the full knowledge and sanction of Congress, the sum of nearly one thousand dollars was paid to counsel, on behalf of the United States, for assisting the Attorney General in defending the act as Constitutional.

The principle, therefore, which is now disputed, has been settled for years. It is the established principle of the Constitution.

What, then, is the question under debate? It is a question between the whole people of the United States on the one part, and their delegated authorities on the other. Shall the Constitution continue to be what the whole American people have made it, or shall it be whatever the Congress and President may choose?

Say gentlemen, Congress must be answerable at the period of elections. This is all admitted. But why would you stake the whole control of their power merely on elections? On our part it is said, let there be all the security which elections can give; but let there be at the same time, the further security of the judicial power. If there can be no regular decision of Constitutional questions by judicial authority, if there can be no check except elections, what effectual check will finally exist? Why would you diminish the number of securities for the public liberty? This is too precious to be exposed to needless hazard, by abandoning any of the means established for its preservation.

While I speak of liberty, sir, let me not be misunderstood. I do not mean a liberty, the love of which is nothing but a general hatred of control. I mean the liberty which is guided by wisdom, and venerates the maxims of integrity. This is the liberty which should be valued as the political pearl of great price. But it is said, no man will consent to throw away his liberty, and be a slave. Would you therefore leave him no security for his liberty except elections? Ought there to be no other Constitutional barrier against usurpation? Whence is it, that so many nations of

the earth, after breaking their chains have had them riveted again? Others, before ourselves, have had the right of elections; others have enjoyed the fruit of their industry; they have had public virtue; they have had personal integrity and wisdom. But to how many of them have their liberties been lost! The French had their elections, perhaps as free as ours; but we see they have lost their liberty.

What, sir, is the fair import of this language about elections? The principle, as far as it is correct, can amount to no more than this, that the majority should control the affairs of Government, and that the elections ascertain the sense of this majority. Apply then, the principle to this House. How are the Representatives apportioned among the several States? A majority of the whole number of free inhabitants in the United States do not elect a majority of the Representatives. The owners of slaves, besides other advantages allowed them in the Constitution, are privileged to have a greater voice in elections than the free inhabitants who hold no persons in servitude. The State which owns the greatest number of slaves, derives a preponderating influence in this House, from having the Representatives apportioned according to the whole number of free inhabitants, and three-fifths of the persons holden in slavery.

Where then is the Constitutional security for the States whose free inhabitants cultivate their own soil, against the States where the tillage of the earth is the task assigned to slaves? Compare the multitude of slaves to the south of the Delaware or Potomac, with the small number to be found in the States north! What is there to counterbalance the advantage given to the States where the slavery of the blacks is most prevalent? The Constitutional security is not to be found in the result of elections, according to the present rule of apportioning representatives. A security might be found in a judicial body, composed of men venerable for their virtues and talents, and placed beyond the reach of this House.

For such a security the Constitution was understood to have made provision, when it was ratified in the several States. By what right can you now rescind the compact?

Will gentlemen say, the Government cannot go on if there should be this check against unconstitutional acts? This might be pronounced a bold assertion, when it is remembered, that the Government has gone on, and gone on for twelve years, in the exercise of its acknowledged powers, with this principle uniformly admitted in practice, any of the people being at liberty as freemen to object, in court, against any act as unconstitutional; and yet laws have been enacted, and carried into full effect.

If any unconstitutional act is passed, what must be done for relief against it, according to the plan of gentlemen who advocate the bill on the table? Under all the disadvantages to which the free inhabitants of certain States are liable, in consequence of the number of representatives allowed for three fifths of the slaves, will gentlemen ex-

plain in what mode any of those inhabitants are to obtain relief? Must persons be subjected to the operation of an unconstitutional act until the period of elections comes round, and in the mean time be sending from State to State with a view to influence the electors not to vote for such representatives again?

Instead of all this sufferance, instead of all these efforts, which may at length be found wholly ineffectual for obtaining redress, especially under the present apportionment of representatives, why may not the injured citizen appear before wise and upright judges, and present to them the Constitution of his country, and receive from their decisions that relief to which he is justly entitled? While there are judges who are dependent on no party, but dependent on the fidelity with which they exercise their functions, men of learning and wisdom, who are placed under no bias from persons in power, but act according to the impulse of duty alone, I should suppose that they might be trusted to expound your laws, and guard the Constitution. Such an establishment is every man's guard against despotism. It is the protection of integrity against violence. It affords a covert against the tempest of party. It is the strength of the feeble against the mighty. Here the honest man might appear with confidence, assured that in trial and in judgment, truth and justice, and these alone, will prevail. Although covered by political clamor, with the opprobrium of guilt, while meriting by his conduct the honors of virtue, he might stand alone, strong in his innocence, and put to confusion a host of accusers.

Yet such an establishment is what is now complained of as an evil. Those who make the complaint, indeed come forward in the humble guise of respect for the wishes of the people, and claim to hold a control at pleasure over the judges. But who are such novices as to be regardless of the event of compliance with their views? When gentlemen arrogate to themselves a power never claimed before in the United States, it ought to teach them, and others, to be cautious. Gentlemen at least ought to hesitate, and reflect, that those who framed and adopted the Constitution, and have practised under it, knew something of its true import. If it is now supposed doubtful on this subject, where should we look for the rule of construction, if not to contemporaneous opinions and usage? Usage forms the standard of language. And whatever might be thought of the phraseology of the Constitution if now introduced for the first time, yet the sense in which it is known to have been understood, when adopted, and a period of years immediately subsequent, is that sense of the Constitution which the people of the United States have ratified, and which we are bound to support.

A number of interesting questions might be expected to arise, when the Constitution was formed. They were to be expected from the nature of a system intended to unite in one Government a variety of States, each of which were to retain their particular powers. When the system changed, from the terms of the Confederation to those of

MARCH, 1802.

Judiciary System.

H. OF R.

the Constitution, the riches and the forces of the United States were to be placed directly within the command of the Government; and the several States were no longer to have an equal voice in Congress, as before. But there were, at the same time, various restrictive provisions in the Constitution, which appear framed to guard against evils which might be apprehended from the change of system. Restrictions were imposed on the powers of Congress, and the respective States. Some of the restrictions, undoubtedly, were to guard individuals against public oppression; and some, to guard the particular States against the Government of the United States, or against each other. Controversies were known to exist between particular States, and others might be expected to arise, as well as controversies between a State and the United States. The parties in such controversies would be powerful; each might put armed forces in motion. When provision was to be made for questions of this nature, who could hesitate to acknowledge the importance of establishing an impartial tribunal, beyond the immediate control of either party? A tribunal, the constitution of which might inspire general confidence, and thereby prevent the recourse to a very different mode of deciding conflicting pretensions. And how were the restrictions on the powers of Congress to be rendered effectual, except by the intervention of such a tribunal? In what other mode could a fair construction of the Constitution be uniformly secured to the respective citizens and to the several States? This impartial tribunal, independent of party, and placed beyond suspicion of undue influence, should be formed into a Supreme Court, vested by the Constitution with power to decide in the last resort. Will you say that Congress may give a construction to the Constitution? So, too, a State Legislature may give it; and there might be as many constructions as there are State Legislatures. Will you then say, that the State Legislatures shall submit without reserve, to any construction that may be given by Congress? The members of the State Legislatures are bound to support the Constitution; and may they not judge of their duty as well as yourselves? Will you force them to submit? Remember the particular States divide the power of the militia with the Government of the United States. With respect to the acts of Congress, and of the State Legislatures, as compared with the Constitution, and with respect to the acts of particular States, when in opposition to each other, who shall decide questions so interesting as these? The Constitution has provided for having them determined by a Supreme Court of the United States. But if this court can be put down at pleasure by Congress, if the judges of the United States can be divested of office as often as parties change, what will be said by the several States? Will they not be naturally led to attend to the great disproportion between States, and the consequent power of one over the other? Virginia, for example, is extensive, and to add to her influence in this House, there are to be representatives allowed for three-fifths of the slaves. With all

the preponderance of such a State, could a small State place a reliance on the decisions of this House, where the interests of the two States should be in competition? So, too, if a judicial controversy should arise between the preponderating State and one of the smaller members of the Union, will the small State have equal confidence in the decision of the judges, if they may at any time be divested of office by act of Congress? No, sir! In common sense it will be understood, that the power which may displace the judges at pleasure, and thereby deprive them of subsistence, can be master of the decisions. Establish then the principle of this bill, and who will be the lords of the Judiciary? If this principle should be ultimately established, you may look for such lords to the south of the Potomac—you may look for them among the masters of the three hundred thousand slaves that stock the plantations of Virginia.

The establishment of an impartial tribunal to decide on the fundamental principles of the Government, is totally unknown under the British monarchy. The opinion of Sir William Blackstone is express, that in one and the same nation when the fundamental principles of their common union are supposed to be invaded, the only tribunal to which the complainants can appeal is that of the God of battles; the only process by which the appeal can be carried on is that of intestine war. Sir, it was because there was no such impartial tribunal to check the progress of usurpation, that the appeals to arms have been made in England, and "one monarch was sent to the scaffold, and another was hurled from his throne." It was not to weep over a fallen monarch, that these examples were mentioned by my friend from North Carolina (Mr. STANLEY.) It was to seize the spirit of history, and to remind us of the instruction to be derived from its admonitions. It was to prove, that when there are great and powerful parties in a country, with arms at command, if there is no impartial tribunal to decide between them the violence of their prejudices, when provoked, will prompt them to make the extreme appeal.

Sir, is it possible, in the nature of things, that injustice should result from allowing the judges of the United States to be independent of the Legislature? If they are once appointed to office, and you have no power to displace them, will not their regard to reputation influence them to do what is right? If they are men of talents, if they understand their duties, and are perfectly secure of being in office, so long as they behave well; if, when in office, they are rendered completely independent of the party by which they were appointed, there can be but little cause of apprehension respecting the decisions of the judge, whatever may have been the particular politics of the man. Place any gentleman of professional ability in such a situation, and he will know and feel, that he has an official reputation to support, and while he is free from any dependence on party, he must be weak indeed if he will sacrifice his character and rights of office, by submitting to be but the tool

H. OF R.

Judiciary System.

MARCH, 1802.

even of the party by whose influence he was appointed.

In the course of observations which have been made by some of the advocates of the present bill, there has been mention of what could be done in the case of extreme events. I hope none of the opposers of the bill has any idea of doing any thing unbecoming his situation, or injurious to the country. But it is not the part of wisdom to be blind to the tendency of measures. It therefore cannot be improper to reflect on the probability, if there is no independent judiciary, of seeing the States at length brought into collision. Unless there is a common tribunal which they will believe to be impartial, and to which they may resort for settling the Constitutional distinctions between their respective powers in a satisfactory manner, what must be the event but a return to the state of things under the Confederation, or a worse, as my friend from North Carolina (Mr. HENDERSON) has depicted? Reflect on the rival pretensions of different States before the adoption of the Constitution! Their rivalries and interfering claims were producing animosities which menaced the country with civil discord. And what enmity is more direful? Advert but to the scenes of the Revolutionary war, especially in those parts of the country where the inhabitants were most divided in political views, and were arranged against each other under the well known names of the different sides which they espoused!—When they were thus divided into hostile parties, was not their animosity far more violent than is known in any contest against a foreign Power? When the nearest relatives become open enemies, are they not of all enemies the most bitter? So when the people of the same country are rent asunder by the violence of civil dissensions, and are armed to contend against each other, are they not then their worst of enemies? And is there no danger of a condition of things like this? From this evil, it is peculiarly the duty of those entrusted with the Government to endeavor to save the people. An impartial tribunal, in which all may confide, is a great Constitutional security against such a calamity. This security, my friend from North Carolina (Mr. H.) is zealous to preserve.

We have been told of officers of the Revolutionary army who knew how to fight, and could fight again. When gentlemen tell us what they can do, we should not be unwilling to believe that such is their opinion. But would it not be better for the country to maintain the judges of the United States in office, and pay their compensations annually, rather than hazard a decision of this kind? When gentlemen speak in such a manner, do they expect all who are against them to be crushed in an instant? Sir! There are also men who fought in the war of our Revolution, who think this bill unconstitutional; men who have given as decisive proofs of their military spirit and talents as any on the other side. Can it be the wish of gentlemen, that these gallant defenders of the country should be arrayed against each other? Say, they have their officers! Have gentlemen also considered, what are their various

means for so serious a trial? If they would have us judge, are they prepared to say what is the amount of their strength? What is the population of those parts of the country on which they rely? What is the number of the free men, which they might think expedient to be sent from home? What is the whole number fit to bear arms? What their state of equipment and discipline? And what their resources for supporting troops in the field? Are their armies already prepared? Since so much has been said about this very undesirable resort, let me observe, that, to the north of the Hudson, there is a single division of militia, respecting which perhaps it is not too much to say, that if, with a conviction of its being their public duty, and on the call of proper authority, they should be assembled complete in arms, for the defence of their Constitutional rights against usurpation, they would not easily be subdued by any force which could soon be sent against them, from the South, by the present Administration. They are commanded by a gentleman who is now a member of this House. But, sir, let me not be understood to say, there would be any disposition to rebellion in that section of the country to which I allude in general, although they should believe the present bill, if passed, to be an infraction of the Constitution of the United States. To say this, would not be doing justice to their character. No, sir! Whatever unconstitutional measures may be adopted, whatever powers may be assumed over the Constitution, gentlemen may rest assured, with respect to that portion of the country, in any event of the opinions of the inhabitants, that there will not be a rebellion.

In making these remarks, I speak of the tendency of measures. The principle, sir, of an impartial tribunal to decide questions respecting the fundamental rights of the society and Government, is an original principle of this country. When adopted in the United States, it was a novelty in the history of nations. The experiment thus far has been successful. To have established this principle of Constitutional security, is the peculiar glory of the American people. It enables the respective parts of the country to assert their Constitutional rights, and at the same time secures internal tranquillity. If you now destroy it, will not the people of particular States have cause to complain that they have been deceived, in the event, and that their property and liberties are not secured according to their just expectations? When the Constitution was adopted, was it not right to expect, that the observance of it would be guarded by the judicial authority, which might hold in check the Legislature and the Executive, if ever they should unfortunately be disposed to overleap the established barriers? Without this, what is the protection for the feeble States, if any of the large and powerful States should influence Congress and the President to concur in unconstitutional acts, and to raise armies, and to draw forth the treasure of the United States, to confirm their usurpations? The union of the States, according to the true principles of the Constitution, is highly, very highly to be prized, as it interests

MARCH, 1802.

Judiciary System.

H. OF R.

the whole American people. You might talk of this Union as a blessing, after the Constitutional security, which renders it precious, should be utterly destroyed. But there might then be many who will feel that the empty sound, although retained, is such a blessing as but afflicts them with the recollection of their ruined hopes.

Mr. DANA closed his remarks against the bill at twenty minutes past nine o'clock.

When Mr. BAYARD moved the rising of the Committee. Motion lost—yeas 32, nays 58.

Mr. PLATER.—I did hope, sir, from the proceedings of Saturday, that gentlemen who are advocates for this bill would have manifested a similar spirit of accommodation at this late hour of the night in granting us further time to express our sentiments. It is now ten hours since I have been in the possession of my seat, and I would put it to the candor of gentlemen, if the fatigue of the day does not incapacitate them from fully discussing a subject of such magnitude. I confess I feel myself unable to do that justice to the question which an earlier hour would have afforded, I shall, therefore, forbear a reference to the variety of notes I have been at the trouble of taking, and only state a few of the principles (without illustration) which will influence my vote, and then resign myself to the consequences resulting from the adoption of the bill. I cannot, however, avoid expressing my surprise that an honorable member from North Carolina (Mr. HOLLAND) should say everything which has been delivered in favor of striking out the first section of the bill is declamation, and nothing can shake his opinion. I very much fear, such is the temper of mind of most gentlemen on his side of the Committee, if an angel was to descend from heaven with a view of conviction, the attempt would be vain. I believe, if we recur to the President's Message, we shall discover he suggests a consideration of this subject, grounded on a statement of the number of causes instituted and decided since the establishment of these courts. Notwithstanding the document showing this statement is admitted by all gentlemen who have spoken on each side of this question to be inaccurate and fallacious, yet I will myself give it the authority they wish, and it will demonstrate that there is a sufficiency of business to justify the continuance of these courts in the circuits of Pennsylvania and Virginia. Is it then reasonable or right to deny the inhabitants therein law, justice, and protection, for the reason the same quantum of business does not exist in the eastern and southern circuits? This would be measuring justice with a partial and sparing hand indeed. Sir, the paucity of suits in these courts is the strongest evidence to my mind that injuries, wrongs, and oppressions have been prevented by the speedy and faithful manner in which justice has been administered, or the legal remedy in the old system was so great as induced suitors to give the State courts a preference to the Federal; consequently, its abolition, for the purpose of a change to the former establishment, must be productive of great delay of justice, great inconvenience and hardship to

the judge. I did expect the ability and ingenuity of gentlemen, particularly some who have the advantage of being frosted by experience, would have given stronger reasons for discontinuing a system which was considered so requisite as to induce the most intelligent characters who sat on the floor of the last Congress to organize and mature, but in this I am disappointed.

Sir, the exclamation of the day is retrench, retrench! In my soul would I unite in this system of retrenchment, did I conceive it for the benefit of society; but when I see gentlemen determined to explode from office a certain set of men who are personally obnoxious to them, and thereby pull down and destroy a law before it is tried, it is impossible, under these circumstances, I can concur in this system of retrenchment. Permit me the liberty of asking if twelve months are sufficient to test the utility of this law? No, sir, they are not; neither any law whatever—the business of a court is not complete in extent in this limitation of time; but as commerce flourishes, population increases, and the transactions of men become more general and extensive, so are objects for the jurisdiction of a court promoted and augmented. How can it be expected we shall have characters valuable for integrity, legal information and respectability, to fill the Judiciary, when we destroy the very inducements to their acceptance—I mean the tenure of office? Is it to be presumed that men who are in the habit of acquiring a plentiful support by their profession will relinquish that for an appointment liable, on account of its uncertainty and instability, to terminate at a succeeding session of Congress? No, sir, your courts will be filled by needy adventurers seeking a support for the object of speculation, men of small talents, perfectly inadequate to gather the fruits produced by superior abilities. When I look into the Constitution and read, "the judges 'both of the superior and inferior courts shall hold 'their offices during good behaviour,'" these last words so clearly show the intention of making the judges independent of others for continuance in office, that every construction tending to pervert this meaning must assail and radically destroy the fundamental principles of the Constitution. There is no proposition more generally admitted and agreed to, and I can say with truth on which the judgment of the people of this country is more completely made up than that of the independence of the judges; it is esteemed essential to the security of life, liberty, property, and reputation, and this the Constitution has wisely guarded by its express provisions. If it is considered an office held during good behaviour is removable by the Legislature, you make good behaviour and legislative will of the same meaning and synonymous terms; this is so contrary to the common acceptance of these words among us, and the contradiction apparently so great, that I really have not heard one gentleman unfold and explain it; but they tell us we must resort to the jurisprudence of England for the definition of it. Can it be possible gentlemen are satisfied the men who compose the Parliament of Great Britain should

H. OF R.

Judiciary System.

MARCH, 1802.

be the expounders of a Constitution made by the people of America? This would, indeed, be a resignation of all law and language. A case which arose in Virginia has been frequently mentioned, whether an office held during good behaviour was subject to Legislative interference? The greatest law characters of the State determined unanimously it was not; in which the Legislature acquiesced. I repeat this in order it may bear on the mind of an honorable gentleman from Virginia, (Mr. RANDOLPH,) who is now in his seat. When a petition not many weeks past was before this House, the subject-matter of which had received a previous judicial decision, he rose from his chair and expressed an anxious wish that the House would not interfere with the decision of a court. Now, sir, the bill upon your table is well assimilated, the judges of Virginia have unanimously decided on its constitutionality, and it is known that nine-tenths if not all the judges of the United States are of the same opinion, and nothing but the mere form of a record is necessary to make the case the same. I therefore should presume, if consistency is to characterize the legislative proceedings of the honorable gentleman, he must withdraw his support from the bill upon your table.

Sir, it is a principle universally acknowledged that no man shall be a judge in his own cause; once you transfer the judicial power to courts under the influence and control of a Legislature you frustrate the impartial administration of justice. I consider the Judicial department as the protector of the Constitution; it stands between the people and the Legislature to check the abuse of a trust committed to them; it is a particular province to determine the constitutionality of all laws—the case may arise wherein it will become the duty of the Judiciary to decide between the Legislature and the President. Should the judges be dependent on either, great apprehensions might exist; they would lean to that side on which their dependency existed. And should the Legislature and Executive unite to invade this Constitution, we should be left without a tribunal to give an impartial and disinterested decision. Thus, sir, you are dispensing with the only check to the oppression of an uncontrolled and unlimited power. And thus this fair and beautiful fabric, so much admired, by being deprived of its greatest ornament and best support, in consequence of this night's decision, before to-morrow's sun fulfils his usual course, will, I fear, vanish from your view.

Mr. FOSTER moved, that the Committee should rise. The motion was supported by Mr. GODDARD, and opposed by Mr. DAWSON.

For rising—yeas 33, nays 57.

Mr. TALLMADGE.—Mr. Chairman: Before this honorable Committee had, by their vote, decided the question a second time that they would not rise, I had fostered the hope that from compassion to the Chairman, (who has been confined to the chair more than ten hours,) they would have consented to postpone the further consideration of the question under debate, until to-morrow. I was encouraged in this belief from a consideration of

the great fatigue which every member present must have experienced from the close attention which has been paid to the subject; and especially from a regard to any gentleman who might wish to offer his sentiments on the occasion. Since I am disappointed in this wish, notwithstanding the extreme bad state of the air within these walls, the very late hour of the night, [ten o'clock,] or my own lassitude and fatigue from these circumstances combined, I must beg the indulgence of this honorable Committee, while I submit a few remarks for their consideration.

The subject now under examination having been so ably and so minutely discussed by gentlemen of different political sentiments on the floor of this House, I had almost determined to signify my opinion by a silent vote, but when I reflect on the solemnity and importance of the present question, involving in my view, the dearest interests of society, I cannot excuse myself to my immediate constituents, to my country at large, or to my own conscience, without briefly stating the reasons which will influence my mind in the vote I am about to give. In doing this I will not trespass long on the patience of the Committee, which from the length of the discussion must be nearly exhausted; and especially when I reflect that the system to which the bill on your table immediately refers, is most probably devoted to destruction.

The first question naturally presented for consideration is, whether the law now under discussion, can be constitutionally passed by this House? And secondly, if it be lawful, whether such a measure would be expedient at this time?

Before I proceed to make a single remark on the merits of the present question, I take the liberty to assure this honorable Committee, that I shall not follow some gentlemen in their wild excursions after objects of extreme irritation and mutual re- crimination. I fear, sir, they have already been too freely indulged, in the course of this debate, to be useful to this Committee, or beneficial to our constituents. It would, however, be improper to pass over the whole unnoticed and unrefuted.

Very early in the debate, an honorable member from Virginia (Mr. GILES) introduced by way of preliminary remarks a prospectus of the foregoing Administrations. As if delighted with those subjects, which, in their nature are calculated to excite popular odium, he has, with much industry, selected those which would be most likely to make a deep and lasting impression on the public mind. We have been told, sir, that the creation of a public debt, which in court language has been called a public blessing, that the origin and establishment of the funding system, with all its attendant evils; the assumption of the State debt, &c., took early root and flourished under the fostering hand of the illustrious WASHINGTON.

With equal candor and similar good intentions has the odious system of internal taxation and excise been called in to his aid; the formation of banks, moneyed capitals and loans, with exorbitant interest, have been also held up to view; and what is more astonishing than all, the former Administrations have been accused of wantonly provoking

MARCH, 1802.

Judiciary System.

H. OF R.

an Algerine war, three thousand miles from our country, and an Indian war on our frontiers, for the purpose of extending Executive influence, by the creation of an army and a navy. Not contented with the imposition of burdens almost too grievous to be borne, they are held up to public view as inviting the barbarians of Algiers and the savages of the wilderness to indiscriminate pillage, torture, and death. To finish the picture, we have been kindly informed that when the authors and abettors of these national evils were about to be hurled from their power, the late Judiciary establishment (now about to be immolated) was formed as a sanctuary, or city of refuge, into which a few might escape to avoid the impending storm. These and similar remarks have been offered to the consideration of the Committee, during the discussion which has taken place; and to my astonishment and deep regret, the name of the illustrious WASHINGTON has been drawn in, if possible to tarnish his unrivalled glory, and to grace the triumphs of those who have but recently been advanced to power. On what other ground is it possible to account for this wanton introduction of characters and principles into the present debate?

Without attempting a reply to any one of those charges (all of which I think capable of the most complete refutation, and which have been particularly noticed by the honorable gentleman from Delaware) I cannot but express my astonishment that any such remarks should have been offered to the consideration of this Committee. For, in the first place, they could have no possible relation to the question under debate; and secondly, the great sensibility which was thereby excited, has been but too apparent to all who have attended to the subsequent debates. It was impossible to suppose that such bold and unfounded attacks would not be repelled with asperity and warmth. I shall, therefore dismiss the whole, with a most sincere desire that no occasion may again occur which shall induce gentlemen to wander so widely from the path of strict propriety and duty.

It has been well remarked by some who advocate the passage of this law, that if they supposed the Constitution would thereby be infringed, no consideration whatever, either of inconvenience or expense, which may be supposed to grow out of the present system, would justify so dangerous an experiment. To this point, therefore, it becomes proper that we particularly, though briefly, attend.

In the first section under the third article of the Constitution of the United States, it is thus written: "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Here appears to be a provision, exhibiting a positive injunction on the Legislature to form, and an assurance to the people of the United States that they should have a Judiciary establishment, to consist of one Supreme Court and other inferior courts, the number and titles of which should depend solely on the discretion of the Legislature.

In the same article it is further ordered "that

'the judges both of the Supreme and inferior courts shall hold their office during good behaviour.' In this clause, the tenure or condition on which the judges hold their offices is expressly pointed out.

"And shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." By this clause express provision is made for the salaries of your judges, which cannot be diminished, but may be increased.

In searching after truth, it is always deemed prudent and wise to make use of such terms to convey ideas as are most familiar and obvious; and in deciding on the meaning of words, not above ordinary comprehension, it will never be deemed unsafe to give them that construction which they usually convey in the common occurrences of life.

As the very essence of the question now under debate depends materially, if not solely, on the true import of the terms made use of in the article recited, "during good behaviour," it must be of primary importance that their meaning be well understood.

In forming the three great branches of our Government, the Legislative, the Executive, and the Judicial, the Constitution has very wisely prescribed to each the manner of its election or appointment; the powers they shall severally exercise and enjoy, and the duration of their services, or their continuance in office. The members composing the House of Representatives are elected to serve for two years, the Senate for six years, and the President and Vice President for four years, after which they all return to the mass of citizens from whence they were taken. But when the courts are ordained, their continuance in office is expressly declared to depend solely on the contingency of their good behaviour. By what construction of language, I beg leave to ask, Mr. Chairman, is it found that the exercise of their functions, thus particularly marked out, can be construed to depend on Legislative will? Surely, sir, there must be something mysterious and unintelligible in these words, "during good behaviour," which in common life are vastly easy and familiar, if they can possibly be construed to mean during the pleasure of the Legislature. I think I have endeavored, in the integrity of my heart, to discover the true intent and meaning of that article or clause in the Constitution which ordains and establishes the Judiciary system, and I am constrained to acknowledge that I can hardly conceive of words more emphatical or more explicit than those which are made use of.

Let me invite the attention of the honorable Committee to the following plain proposition, and, aside from the question now under discussion, let each member decide for himself what would be the fair and honest construction of the contrast. A landlord offers to his tenant the occupancy of a farm, or any other privilege, which, for the consideration of his service, he conveys over to him to hold and enjoy during good behaviour. In process of time, and confessedly with-

out any complaint of misconduct on the part of the tenant, the landlord turns him off, and deprives him of his living. What verdict would this Committee render if such a cause was now under trial? Or, in other words, may I not venture confidently to declare, that every honorable member on the floor of this House would advocate the cause of the tenant against his landlord, as the cause of innocence and justice against violence and oppression? I humbly trust I may. The same remarks will hold equally good when applied to a privilege or benefit granted, or covenanted to be bestowed on an individual, or on persons in their collective capacity. If this inference is correct, on what principles of justice or equity can the Legislature of the United States assume to itself the right of violating a contract, the outlines and leading features of which are expressly laid down in the Constitution?

When a court is constituted by a Legislative act, the proposition made, or the inducement held out to the candidate, through the Constitutional organ, is the honor of an appointment as a judge, and the salary which by law is attached to the office. The Constitutional obligation on the Government is, that it shall not deprive you of your office during good behaviour. When the appointment is thus constitutionally made, and the judge shall have accepted of the same, the contract is ratified and becomes complete in all its parts. The Legislature having thus fulfilled their duty by obeying the injunctions of the Constitution, has nothing farther to do in the business. The court thus constituted becomes a constituent or co-ordinate, not a subordinate branch of the Government, subject only to Constitutional control. Thus it appears demonstrably clear that the Constitution founds the tenure of office solely on the contingency of good behaviour; the Legislature affixes the salary to the office, and the judge cannot be deprived either of office or salary but in the mode expressly pointed out in the Constitution. Is not this the plain interpretation of the Constitution? Is not this a construction which may very emphatically be termed legal, political, and moral, accommodated to the understandings of all men, even of the most ordinary capacities?

But, sir, if gentlemen are determined on having the judges of your courts subject to removal, on other grounds than by impeachment, why is this power to be vested in the Legislature? Those who advocate the right which the President so freely exercises, of making removals, and thereby causing vacancies to happen at pleasure, would probably be more consistent if they would allow him the power of removing the judges also. If it should be objected that the Constitution gives to him no such power, I answer, that the Constitution gives no express power to the President to make any other removals. In the one case, the Constitution is silent with respect to removals from office, while in the other (*viz*: in the case of the judges) the tenure of office is expressly mentioned, and the negative may be fairly implied.

Our Constitution guarantees us a Government of checks and balances, so organized that the sev-

eral branches of it have a necessary dependence on each other. No legislative act, however useful or desirable it may appear, can be performed by one branch of the Government without the consent and concurrence of the others, constituted for this purpose. Hence is derived to our constituents a degree of safety and prudence of immense value; and every day's experience demonstrates to us the benefits and blessings of these mutual checks. There is a responsibility attached to the Executive, very different from that which belongs to the Legislative branches of your Government; for while the latter are responsible only to the people, by whom they are appointed to office, the former is amenable for all his official conduct, immediately to the two branches of your Legislature, by one of whom he may be impeached and by the other removed, if found guilty, and absolutely disqualified from holding any office under the Government. If therefore the power of removal, now contended for, is about to be assumed, I ask gentlemen, whether, on the principles of our Government, the power would not be more safely lodged in the hands of the President than with the Legislature? Not that I would for a moment consent that this power can be constitutionally exercised by either; but if the independence of the Judiciary must be prostrated, I submit to the consideration of those who advocate the passage of the law which annihilates the late Judiciary system, whether the exercise of a power, which I conceive to be fraught with so much danger, would not be more safely lodged in the hands of the Executive.

If the doctrine of independency is taken away from the Judiciary, is there no danger that the Legislative power may be degraded to gratify the most vile and malignant passions? Surely, Mr. Chairman, there must be some radical evil, some very powerful difficulty, which needs the strong arm of the Legislature to correct and remove. This physical strength, I know, may accomplish the end, but in my view of the Constitution, it cannot sanction the wrong; it may indeed inflict the wound, of which I very much fear this *magna charta* of our independence will linger and die. The very circumstance of strength, or power, which the Legislature possesses, affords cause for apprehension, that when the barriers of your Judiciary are thus thrown down, it may at any time be wantonly assailed by superior force.

The Judiciary being a co-ordinate branch of the Government, with the Legislative and Executive, is a wholesome check upon their proceedings, and in this way may very justly be considered the guardian of the people's liberties. These three legitimate branches of the Government when united, may defy any attack; but the Judiciary from its very nature, being the most feeble, if unprotected by the others cannot long endure. Whenever a predominant faction shall exist (and factions may always be looked for under free and popular Governments) and your Judiciary shall interpose to arrest its progress towards any unconstitutional end, how unsafe and precarious must be our situation! It is therefore not only forbid-

MARCH, 1802.

Judiciary System.

H. OF R.

den to assail her walls by any form of attack, but the contrary duty is forcibly impressed, to nourish and cherish this helpmate of the Constitution, as every noble and honest heart would the fair partner of his domestic bliss. In executing this duty, the Legislature perform one of the implied functions of their appointment, and a very important duty attached to their office. If this doctrine is correct, then it will undeniably follow, that every attempt to prostrate the dignity and independence of the Judiciary system, is an attack upon an important constituent branch of your Government, and ought to be resisted. Encroachments by the Legislature are perhaps the most dangerous, because the least suspected and accompanied by the most power.

Having thus briefly explained the unsophisticated meaning of the words in the Constitution, by which the Judiciary system is established, I shall forbear to make any remarks on the construction which some of the States may have given to the same expressions in their State Constitutions. Nor will I detain the Committee at this late hour of the night, to draw the parallel between the Judiciary establishment of Great Britain and that of the United States, in point of independency and inviolability. Had I time, I might quote copious extracts, from high authority, in point; I mean from the writings of the President of the United States. In his Notes on Virginia, he appears to have handled this subject with great perspicuity and precision, placing the independence of the judges on high ground. For the present I must content myself by referring gentlemen to that treatise, and particularly to that part of it which proposes a constitution for the State of Virginia. Indeed these points, with others which might be noticed, have been accurately explained and enforced by gentlemen who have preceded me in their remarks.

In determining the true meaning of the Constitution of the United States, it must be vastly important to know what were the arguments of the leading members of the Convention, when that memorable instrument was framed. Had I time, and was not the patience of the Committee nearly exhausted by the very lengthy discussion which has taken place, I would read many extracts from the debates of some of the most prominent speakers on that occasion. By these, we might with great accuracy test the opinion of the General Convention on almost every article of the Constitution. My honorable friend from South Carolina (Mr. RUTLEDGE) has favored us with some of those sketches, with great correctness, which must be in the recollection of this honorable Committee. One very important fact I shall not feel justified to omit. A motion was made in the General Convention, when the article respecting the Judiciary establishment was under consideration, to authorize the President of the United States to remove a judge from office, on the joint application of both Houses of Congress. This motion, after being thoroughly debated and maturely considered, was negatived. Sir, I am happy in being able to lay before this Committee such high authority;

and in remarking that the enlightened framers of our Constitution, viewing the independence of the Judiciary of such vast importance, rejected the propositions as dangerous to the liberties of a free and independent people. What strong and irrefragable evidence does this, afford, Mr. Chairman, that the principle which I contend for is correct, and that the ground on which we wish to place this important branch of our Government is the same which it occupied when the Constitution was framed? Should any gentleman wish further information on this head, give me leave to refer him to the original documents in the office of the Department of State.

A further proof in favor of our position is derived from the reception which it met with in the State conventions. When the Constitution was sent to the several States for adoption, every article and clause of it underwent a severe scrutiny and a most critical examination. Perhaps no article was more minutely examined than that which respects the Judiciary establishment, and from what I then heard and have since been informed, I am induced to believe that the Constitution would not have been adopted, if the independence of your judges had not been deemed to be secured by that instrument. In most of the States, where the debates were preserved, it appears that this particular clause was discussed in direct reference to the independence of the judges, or the tenure by which they hold their offices. In Virginia, the doctrine which we contend for, has always been strenuously and honorably maintained.

It is objected to the doctrine that I contend for, that if the Legislature cannot annul the courts when once organized agreeably to the Constitution, they are paramount to the Legislature themselves. A very slight attention to this subject, I am persuaded, will prove this reasoning very incorrect. Legislative provision is necessary to bring into office the President of the United States. Yet the Legislature, as such, cannot remove him. Does it hence follow that he is paramount to the Legislature?

It is also remarked by those who advocate the passage of the law on your table, that the power which creates or necessity possesses the right and ability to destroy. The same Legislative power necessary to call a court into being, is also necessary to lay a tax, or pass any other law. I beg leave here, also, to take a difference in the two cases. The Judiciary is a constituent part or branch of the Government, by an express provision in the Constitution, and the Legislature only pursues the Constitutional will, as its organ, by giving to it existence and form; but its inherent powers are all expressly derived from the Constitution, which, I trust, will not be claimed to belong to any other law. The absurdity of this objection will further appear if the Constitutional mode of organizing the Government is but slightly examined. When the census of the United States is laid before Congress, a law must be passed apportioning to each State its number of Representatives. This law is again brought under the Legislative direction of the several States be-

fore the House of Representatives can be formed. Will this give to the Legislature a power to extend or limit the periods of their service, or in any shape to vary or alter their duties, different from the Constitutional provisions? I presume it will not. The same remarks will, in a certain degree, apply to your President, Vice President, and Senate.

It may be further remarked, that the salary of the President of the United States is fixed by law, even by an act of this omnipotent Legislature; and, by the Constitution, "it may not be increased or diminished during the period for which he shall have been elected." Will any gentleman of this Committee contend that the Supreme Legislature have a right to vary that compensation, even by the wholesome corrective, a refusal to appropriate? I trust not.

Of equal avail do I consider another argument, which is much relied on by our opponents, viz: that if you cannot constitutionally remove the judge, you may, nevertheless, take away or destroy his office. Really, Mr. Chairman, there appears to be a degree of chicanery and cunning in such a proposition, highly unbecoming the Legislature of any country whatever.

All laws, human and divine, require that the parent and the master should both feed and clothe the child or the servant. Yet if the master should neglect to furnish necessary clothing, and the servant should die in consequence of such neglect, the master, by this novel construction, would be clear. The judge, in this case, is not removed from his office, but the office from the judge.

It is further urged, that the national sentiment is expressly in favor of the repeal. But, now, sir, does this appear? Because a majority of the members, returned to serve in the present Congress, are in favor of this measure, does it conclusively follow that the great body of our constituents wish such an event? Is it not true, beyond contradiction, that many of the most prominent features of the late Administrations have been represented as involving our country in the most disastrous evils, and even tending to establish a monarchy over the people? Need I call to the recollection of this honorable Committee, the base attempts which have been made use of, to calumniate and traduce some of the fairest characters that have appeared during our glorious struggle for liberty and independence? For the honor of my country, and the dignity of human nature, I wish a veil could be drawn over the conduct of some who were so base as to assert, and others who were so scrupulous as to believe that the great founder of our independence had become an apostate. Well may America blush, when she is told that the illustrious WASHINGTON, whose bravery and wisdom so eminently contributed to establish our independence, has been libelled as a monarchist, and accused of renouncing those principles of rational freedom in which he embarked. If the virtues of his private life, and the more glorious and resplendent actions which adorn his public character, could not secure him from the envenomed shafts of envy and malice while he

lived, it could not be expected that his political administration would pass unnoticed and uncensured when he should sleep in the tomb. Had the honorable gentleman from Virginia (Mr. GILES) respected the feelings of those who venerate the memory, as they value the services of the unparalleled man, the ashes of the hero and the patriot would not have been disturbed on this occasion. Attempts like these have been but too successfully employed to excite the popular clamor against measures which have proved vastly beneficial to our country, against men whose services and sacrifices merit the gratitude of all. And permit me, Mr. Chairman, in this place, to deplore the prevalence of that party spirit which our great political father and friend, as in prophetic vision, foresaw would, if indulged, commit the peace and destroy the happiness of our rising Republic. I have indulged these few desultory remarks, founded, I trust, on solid fact, that I might hence infer the true ground of popular clamor, and that the repeal of the late Judiciary system has been called in to aid the design. How is it possible, Mr. Chairman, that the great body of the people should be so unfriendly to the late establishment, as the advocates for the repeal assert, when neither time nor opportunity has been afforded them to judge of its merits or defects! Surely, sir, there can be no solid weight in this objection, and I trust it will be abandoned.

I am not, sir, a professional man myself, nor have I any kinsman, however remote, who is to be benefitted in the smallest degree by the late Judiciary establishment; of course I can have no motive in defeating the passage of this law, but what is connected with the general interest of my fellow-citizens. So far as my knowledge and information have extended, I should have pronounced very favorably of the late system, as promoting dispatch in the administration of justice, and remedying many defects which were apparent in the old law.

Many other objections have been made to the independence of the judges, on the principles that we contended for, of which I will briefly state a few as they have occurred.

Say our opponents, if putting down or annulling a court violates the Constitution, this was effectually done by enacting the law now proposed to be repealed. If the fact should be admitted, what argument can possibly be drawn from hence to favor the proposed repeal? If a former Legislature has done wrong, is the evil remedied by continuing the practice? But I trust, sir, the principles and provisions of that law are capable of the most complete and perfect defence; nor would I now omit the reply, had I not a full belief that this honorable Committee must be impressed with what has been urged on that subject, especially by my colleague, (Mr. GRISWOLD,) viz:

The expense and dangerous tendency resulting from such a number of judges.

The small number of causes which have been brought into those courts.

The peculiar benefits to be derived from State tribunals.

MARCH, 1802.

Judiciary System.

H. OF R.

The omnipotence of Federal courts, and the aspiring ambitious views of the judges, manifested in their calling States to bow to their sovereign mandates, and using the late Sedition law as a political engine for persecution.

Judges becoming Federal apostles, preaching up federalism when on the duties of their circuits, and looking for objects on which to satiate their vengeance.

The peculiar state of the Legislature when the law now under consideration was passed.

These and a variety of similar objections have been stated, and the same have been so fully and repeatedly refuted, that any further attempt on my part to obviate their force, or expose their absurdities, I am aware, might be deemed by many, but useless repetitions. I cannot but consider them as calculated for no better purpose than to inflame and mislead the public mind, and to divert its attention from a consideration of the true merits of the question now before the Committee.

The honorable gentleman from Virginia, (Mr. GILES,) has thought proper to introduce the teachers of religion into his argument for abolishing the Judiciary. They have been represented as converting their pulpits into political forums, and stirring up all the angry passions of the human mind. If these assertions were literally true, it is not perceived that they could have any possible bearing upon the present question. But in justice to that venerable class of our fellow-citizens I feel constrained to declare that I think them undeserving so general and so illiberal an attack. Throughout New England, they have long and deservedly been considered as a learned, pious, unassuming, and very useful class of men. Devoted to study and instruction, and relieved from the cares and the burdens of State, their time and talents are devoted to moral pursuits. To this, as one of the most prominent features in the establishment of the Northern and Eastern States, may it safely be asserted, that we owe much of that sobriety and regularity which has heretofore so eminently contributed to our prosperity and glory. When suitable occasions present, wherein consists the political sin, or even the impropriety, that the teachers of morality should also be instructors in the science of good government? Through the late Revolutionary war, no class of men were more eminent for their exertions in the cause of our country, and at no period have they been found opposing the general good, manifested in the Constitution and laws of our country. Among this class of men, so far as my knowledge has extended, anarchy and disorganization have found few, very few, abettors. However irrelevant these remarks may appear to the subject now under discussion, I deem no apology on my part necessary, when it is known that a meritorious class of our citizens have been wantonly attacked, without the power of vindication or reply.

But, Mr. Chairman, I beg leave further to remark, that if the constitutionality of the law in question admitted of no doubt, still the expediency of the measure, at this juncture, is very questionable indeed.

The importance of having Federal tribunals open to all who may prefer them to the State courts.

The prospect of obtaining speedy and prompt decisions with the least possible expense.

The favorable reception on which the new establishment has met with, evidenced by declarations and memorials from those the most competent to estimate its utility and worth.

The special and peculiar benefits hence resulting to the commercial interest, from which your revenue is almost exclusively drawn. And the manifest inconveniences and defects of the old system, which are in a great measure remedied by the new, are reasons of no small or trifling consideration, to induce the continuance of the new establishment. On each of these I might dilate, but presume that every member of this Committee must feel impressed with their importance. Innovations on established principles and forms have ever been deemed dangerous; at any rate it is a mark of prudence not to run hastily into them. In the case before us, time has hardly been given for a fair experiment; and if the institution is to be tested by its usefulness, no prudent and unprejudiced man can say that we are ripe for such a decision. If it should, therefore, only be doubtful as to its utility and expediency, may it not be hoped that a majority of this Committee will declare, by their vote, that they will at least give it a further trial. If, on further experiment, the system should be found defective, or inexpedient, will it not then be as fully within the power of the Legislature to repeal the law in question as at the present time? If gentlemen who advocate a repeal of the late Judiciary establishment are correct in their ideas, that a majority of our constituents prefer such a measure, surely there can be no danger of their losing either the power or the inclination to accomplish so desirable an end. I would further remark, that if the accession of moneyed men to the community, may be considered of any avail, no circumstance of governmental interference will contribute so effectually to this end, as the establishment and maintenance of an independent Federal Judiciary. To this branch of your Government, men of property always look with confidence for support. Without stability in this important branch, your moneyed capitals will be drawn off, and those which were designed for this country will be turned into some other course. The same remarks will apply with equal force to the sale of your wild lands. Need I turn the attention of this Committee to those States which have been recently formed for examples. The iniquities and evils which have been practised on non-resident proprietors, under State Legislatures and State Judiciaries, have been incalculably great; and if your Federal tribunals should be prostrated, or the confidence of the community in them weakened, these evils would undoubtedly increase, and the value of your new land would greatly diminish. Let it not be remarked that the State courts are sufficient for all these salutary purposes, as well to excite confidence as to protect property. These institutions

of our State governments, I venerate as much as any man, but where strangers and foreigners are concerned, or even citizens of different States, the objection is of no avail.

Mr. Chairman, we have now progressed thirteen years, under the auspices of a constitution, ordained for the express purpose to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, and until very lately I have never heard the independence of your Judiciary called in question. Give me leave, sir, to call on gentlemen, from whom I differ in sentiment on this subject, to inquire coolly and dispassionately of each other, whether they would have contested this principle if the late appointments in the Judiciary had not taken place. Sir, if this barrier should be broken down, I see nothing to prevent a future Legislature, if it should be so disposed, from prostrating your Supreme Court at their feet. In fact the principle now contended for by the advocates of the present bill, goes all lengths towards prostrating the independence of your Judiciary in all its branches. Are gentlemen prepared to adopt such a system as this? Are the advocates for this novel doctrine willing to declare that the temple of justice shall be broken up, her purity violated, and her glory, honor and independence buried in ruins? Surely, sir, these are not visionary ideas; but they appear to me to result naturally, if not necessarily, from the success of the present measure. I am by no means disposed to excite needless alarm; far less do I wish to portray the evils attendant on civil war. Too much, it appears to me, has been said on that subject already. Some gentlemen talk of a civil war, of a revolution in our country, of swords and bayonets, and of friends and relatives set in hostile array against each other, as of the most trifling, and common occurrences in life. Indeed one gentleman (Mr. NICHOLSON) has borrowed an unusually bold metaphor and has told us of a cloud of bayonets: and, as if not contented with calling in domestic force to his aid, it would seem as if celestial interference was expected. Sir, I have passed through one revolution, and shared in its toils from its commencement to its issue, and most devoutly do I pray never to behold another. The language sometimes held upon the floor of this House, looks more like preparation for battle, than for cool and deliberate discussion. Although I accord with the honorable Speaker in his remarks on this particular point of the subject, yet I cannot believe him correct in the full extent of his doctrine. He supposes it would be hardly possible to bring our country to such a state of irritation as to take up arms against each other. Sir, the seeds of every evil passion are the native production of every heart, and suitable excitement will bring them into exercise. Let this Government and Constitution be prostrated, and I have no hesitation in declaring that a civil war must be our portion. For heaven's sake, for our country's sake, let every thing tending to such an issue, be most carefully avoided!

Although I am not about to say, that if you pass the bill on your table, a revolution will ensue, yet I do say that such terrific declarations as are held up to our consideration, have a tendency to prepare the public mind for such a deplorable issue. The National Legislature not only gives law but also a kind of political tone to our country. It ought therefore to be a school not only of sound policy and good Government but also of urbanity and politeness. When our constituents are persuaded that our conduct is influenced by a regard to their interests and the public good, it may be hoped that they will imitate our example.

The blessings of peace and independence were but half secured, before the Constitution of the United States was formed and adopted; and give me leave to add that the brightest star in this new political constellation is your independent Judiciary.

In the present constitution of human nature, Government and efficient laws are absolutely necessary; in the structure of which passion and party views too frequently mislead the judgment and obscure the understanding. A sober and dispassionate corrective becomes, therefore, absolutely necessary. Your tribunals of justice afford the necessary relief. Here the rich and the poor, the strong and the weak, meet on equal ground; and what I claim to be a principal excellence, inherent in their very nature, may here be found, viz. a right to decide between the Constitution and the law. However terrific this may appear to some gentlemen, who advocate the omnipotence of the Legislature, I consider the power which the Judges from the very nature of their office possess, of declaring a law null and void which contravenes the Constitution, to be of the highest importance, and attended with the happiest effects. What safety is there to any individual, or even to the community at large, if this Constitutional check should be removed! If the Legislature are to judge in the last resort on the constitutionality of their laws, what hope can there be entertained of redress, even should they violate the principles of the Constitution in the most flagrant manner? A consolidated Government is the direct result of Legislative and Judicial powers being vested in the same body. No people can long remain free, whose Legislature assumes the right first to enact and then to expound her laws. The late revolutionary tribunals in France advanced but one grade further, and executed their laws themselves, and surely no people were more wretched, and no tyranny more complete. Every encroachment on Constitutional prerogatives, tends to absolute and complete despotism. If a law should be declared unconstitutional by a court, it would by no means follow from thence, that they claimed superiority over the Legislature; but that in the exercise of their functions, they pronounce the sovereign will of the people, expressed or implied in the Constitution, which is superior to both. Indeed, if this part of their duty should be omitted their oaths would be ineffectual, and perjury would be justly imputed to them. I am happy that on that point of the argument, one of our opponents (Mr. Ba-

MARCH, 1802.

Judiciary System.

H. OF R.

con) fully accords with us in sentiment and allows to all courts the discretion of pronouncing between the Constitution and the law.

Between a government of laws and a government of force there is no medium. If your fountains of justice are pure, independent, and free from restraint, your land will enjoy prosperity, and your people will be tranquil and happy; but if the law on your table should have a tendency (as I very much fear is the case) to make the Judiciary the subservient panders and tools of the Legislature, too late will posterity bewail the decision of this inauspicious day.

Mr. T. concluded his remarks against the bill a quarter before eleven, after which, Mr. LOWNDES spoke for a few minutes against the passage of the bill.

When the main question was taken, on striking out the first section of the bill, and lost—yeas 31, nays 60.

Mr. BAYARD rose and stated his desire to offer certain amendments, the objects of which he specified; and his preponderating wish that they should be discussed in the Committee of the Whole. But he added, that he should not object to the Committee rising and reporting the bill, provided an opportunity were allowed in the House to offer them.

Mr. GRISWOLD was of opinion that it was most proper that the amendments should be made in the Committee; he therefore moved that the Committee rise and ask leave to sit again, in order that the amendments might be submitted to-morrow. The question on rising was taken and lost—yeas 37, nays 54.

The remaining sections of the bill were then read, without any amendments being offered. When the Committee rose, and reported the bill without amendments; and then the House adjourned, at a quarter past eleven o'clock.

TUESDAY, March 2.

A Message was received from the President of the United States, transmitting letters recently received from our Consuls at Gibraltar and Algiers, presenting the latest view of the state of our affairs with the Barbary Powers.

The Message and letters were read, and ordered to be referred to the committee appointed, on the fifteenth of December last, to prepare and bring in a bill or bills further and more effectually to protect the commerce of the United States against the Barbary Powers.

A petition of sundry inhabitants of the county of Wayne, in the Territory of the United States Northwest of the river Ohio, was presented to the House and read, stating certain inconveniences to which they have been, and are now, subjected, in consequence of the Indian claims to lands in the said Territory not having been yet extinguished, and the right of the same vested in fee simple to the petitioners; also, of the want of post roads extended to their settlement, and praying relief in the premises; also, that one or more townships of land may be granted for the purpose of erecting

and endowing an academy or college in the said county of Wayne, for the instruction of youth in that Territory.

Ordered, That so much thereof as relates to an establishment of a seminary of learning in the said county of Wayne, be referred to the committee appointed on the twelfth ultimo, to whom was referred a petition of the Trustees of "Jefferson Academy," at Vincennes, in the Indiana Territory; that they do examine the matter thereof and report the same, with their opinion thereupon to the House.

Ordered, That the residue of the said petition do lie on the table.

Memorials of sundry merchants of the city of Hartford, in the State of Connecticut, and of sundry inhabitants of the town of Washington, in the State of North Carolina, were presented to the House and read, respectively praying relief in the case of the capture and condemnation of their property by the cruisers and courts of the French Republic, during the late European war.—*Referred*.

The SPEAKER laid before the House a letter from the Secretary of Treasury, accompanying annual statements of the district tonnage of the United States on the thirty-first of December, one thousand eight hundred, formed from the quarterly abstracts rendered by the several collectors, together with certain observations explanatory of the said statements; which was read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his reports on the petitions of James Bell, by Peter Mills, his attorney, and of Isaac Sawyer and others, referred to him by order of the House, on the twelfth and seventeenth ultimo; which were read, and ordered to be committed to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to authorize the President of the United States to convey certain parcels of land therein mentioned;" to which they desire the concurrence of this House.

The said bill was twice read and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement of the emoluments of the officers employed in the collection of the customs for the year 1801, and a letter, to him, thereon, from the Comptroller of the Treasury; also, a statement of the sums paid into the Treasury of the United States, by the Collectors of each port, during the same year; which were read, and ordered to be referred to the Committee of Commerce and Manufactures.

JUDICIARY SYSTEM.

The House then proceeded to consider, at the Clerk's table, the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes," to which the Committee of the whole House, on the first instant, reported no amendment: Whereupon,

Mr. BAYARD moved to strike out the first section of the said bill in the words following, to wit :

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress, passed on the thirteenth day of February, one thousand eight hundred and one, entitled 'An act to provide for the more convenient organization of the Courts of the United States,' from and after the first day of July next, shall be and is hereby repealed:"

And, on the question thereupon, it passed in the negative—yeas 30, nays 55, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Smilie, John Smith, of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. BAYARD then moved to amend the bill, by adding to the first section thereof, the following words: "except so much of the forty-first section of the said act as provides for the augmentation of the salaries of the District Judges of Kentucky and Tennessee:"

And, on the question thereupon, it passed in the negative—yeas 40, nays 53, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Smith, of New York, John Stanley, John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John

Condit, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Thomas, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, S. L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, junior, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. BAYARD then moved to amend the bill, by inserting after the words "one thousand eight hundred and one," in the fifth section thereof, the words following, to wit: "if the same be returnable after the said first day of July next:"

And, on the question thereupon, it passed in the negative—yeas 37, nays 51, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Smith, of New York, John Stanley, John Stewart, B. Tallmadge, S. Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. BAYARD moved to amend the bill, by adding to the end thereof, a new section, in the words following, to wit:

"And be it further enacted, That all proceedings of a criminal, penal, or a civil nature, which have been commenced in the circuit court created and established by the act first herein mentioned, and whereof the circuit courts existing prior to the passing of the said act, had not cognizance, shall be cognizable in the circuit courts revived by this act, and may be proceeded in, in the same manner, and with the same effect, as they could have been in the circuit courts established by the aforesaid act:"

And, on the question thereupon, it passed in the negative—yeas 39, nays 49, as follows:

MARCH, 1802.

Judiciary System.

H. OF R.

YEAS—John Archer, John Bacon, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Alston, Theodorus Bailey, Phanael Bishop, Richard Brent, Robert Brown, Wm. Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmdorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, James Holland, David Holmes, Geo. Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, James Mott, Anthony New, Thomas Newton, junior, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Mr. GRISWOLD moved to amend the bill, by adding to the end thereof a new section, in the words following, to wit:

"And be it further enacted, That all suits, process, pleadings, and other proceedings of what nature or kind soever, depending in the circuit court in the district of Ohio, and which shall have been commenced within the Territory of the United States Northwest of the river Ohio, shall be, and hereby are, from and after the first day of July next, continued over to the superior court of the said Territory, next thereafter to be holden; and all other suits, process, pleadings, and other proceedings of whatever nature or kind soever, depending or existing in the circuit court of the said district, shall be, and hereby are, from and after the first day of July next, continued over to the next superior court of the Indiana Territory of the United States next thereafter to be holden."

Messrs. GRISWOLD, FEARING, DANA, LOWNDES, EUSTIS, BAYARD, and RUTLEDGE, spoke in favor, of amending, and Messrs. GILES, BACON, ELMENDORF, S. SMITH, and HOLLAND, spoke against amending the bill.

Mr. EUSTIS.—In the negative given to the several amendments which have been offered, I perceive a determination to pass the bill in its present form. This I regret. I have voted for those amendments from a conviction that they were proper and necessary, and that others ought to be made before the bill should pass; that the defects of the old system be supplied at the same time and by the same act which abolishes the present system.

Satisfied in my own mind of the Constitutional right to pass the bill, I have hitherto been silent on that and every other part of the subject; but as two of my honorable colleagues have brought the

sentiments of Massachusetts into the scale of the unconstitutionality, I may be permitted to state one fact expressive of the ideas which which have prevailed in that State. Several years past, and when no party spirit mingled itself with the consideration, repeated attempts were made to abolish the whole set of inferior courts, and to establish circuit courts in their stead. A bill for this purpose passed one branch of the Legislature after a long discussion, was considered and debated in the other branch; an election intervened, the subject was again revived, and I have never heard that the Constitutional right was called in question. The judges of these courts, of our Supreme Court, and the judges of the courts of the United States, hold their offices by the same tenure; the cases are similar; and so far as my information extends, the sentiment which prevailed in the Legislature pervaded the State. Had this House been equally free from the spirit of party, I cannot believe this objection would have arisen to such an height. Confining themselves to the use of terms, and under the influence of other circumstances, gentlemen appear to me to be wrought up to a zeal which has beguiled their judgments. With a proper respect for those who differ from me, I am perfectly satisfied of the Constitutional right to abridge or abolish, as well as to extend and establish courts, as the public good or the public necessity may require. For the soundness of this doctrine, without a comment on the Constitution, without opening it in this place, I should be willing to trust to the construction which would be given by the common sense of the people of the United States, and to rest my reputation on their decision.

The doctrine contended for by some gentlemen, is so foreign to the meaning and fair construction of the instrument, so fatal to a primary and elementary principle, and ultimately and in its consequences so destructive to the very independence of the Judiciary, for which they contend, that I would consent to pass the bill, imperfect as it is, was there no other way to repel it. But this is not necessary; the Constitutional question was decided by the vote of last evening.

The right having been established, in what manner should it be exercised? Not on ordinary occasions or light causes. A high and solemn discretion should preside over and direct its use. Is this an occasion which requires it? On what ground is the bill on your table predicated? On a conviction that the courts, as established by the law of the last session, are not required by the wants or circumstances of the country; that the provisions therein made are unnecessary and burdensome to the people; and that they ought, therefore, to be reduced. This the bill is intended to effect; it abolishes the present and revives and restores the past system. But the system revived is allowed to be materially defective. The judges of the Supreme Court have not been able to comply with the duties required of them. The association of the supreme with the district judges has occasioned a want of uniformity of decision, and an increased uncertainty of the law, different

judges being called to preside in the same court, and often over different stages of the same cause; whole terms have failed; Legislative acts have repeatedly been found necessary to continue action.

What, then, is to be done? At the same time that you restore the one and abolish the other, that which is restored ought to be amended and rendered competent; the act should carry on the face of it its own justification. But, say gentlemen, we will first repeal the existing law, abolish the present system, and afterwards, by another bill, we will provide for the defects of the old. One of my honorable colleagues believes neither to be perfect, but that the old is preferable to the new. This belief will justify his voting for the bill. Perfection is not to be expected. But what is the fact? By passing the bill as it now stands, we take away a system too competent, and restore one superior in principle, but practically defective. To justify the change, that which is restored ought to be rendered competent to the due administration of justice, or we may be accused of legislating for men and not for measures. One honorable gentleman objects to amending this bill, because amendments were not permitted by the last Congress to be made to the act which is now intended to be repealed. This, surely, is not a good reason. The gentleman would not have us pursue a line of conduct which he, on a former occasion, disapproved.

It is objected that, in attempting to amend, the bill may be lost. How can it be lost? Will it not be under a constant control of the majority? If there be danger of losing the bill, there is greater danger of losing the necessary amendments after the bill is past. Should this be the case, what is hazarded? The imputation of having abolished the present system, because you had the power, or because you had the will, or from some motive not honorable or satisfactory. If the repealing act, on the other hand, restores the old system, superior in principle, competent to the due administration of justice, and free from objection, (and I would amend it until every reasonable objection was satisfied,) what is the impression? You have abolished a system which was unnecessary and burdensome, and have restored another and a better in its place. You shut the mouths of your enemies; you command the public confidence.

Let the true reason be assigned. The patience of the House is exhausted. They have seen two weeks wasted in a wild deviation from the subject. Far from a wish to revive, I would throw a veil of oblivion over the past, impenetrable, if possible, to the eye of a discerning people; too often already has the public repose been disturbed by alterations within these walls. Let them cease. Let us recollect that we owe something to the community—to ourselves. For once let us bring our prejudices and passions to the law of our country.

Let the bill rest on the table for a few days, until the necessary amendments can be prepared. In the mean time let the other business of the ses-

sion go on. Take the collected wisdom of the House, take the assistance of the minority. Gentlemen say they cannot be confided in, as they have declared the act unconstitutional. Make the trial. If they refuse their aid they give you a triumph; if they discover the disposition to embarrass, take the business out of their hands and complete it. Much has been said of public sentiment. Sir, the people of this country are weary of professions. They require the evidence of facts to satisfy them. They ought, in my opinion, to have that evidence in the present case; this bill ought to carry on the face of it unequivocal evidence of the good faith with which it is enacted; in forming this opinion, I acknowledge that I look beyond the walls of this House.

This is the course which an honorable gentleman from Virginia has stated his wish that the business should have taken at first. This is the course it ought to have taken, and which it ought now to take; it is not too late.

With perfect confidence in the sincerity of gentlemen who tell us that the amendments will be made in a supplementary bill, I have also learned, from some small experience, that there is no certainty for the future, especially in public bodies. Gentlemen cannot command or engage for others. After the bill is passed, I am very apprehensive the amendments may be disagreed to, and finally lost. As no hazard is required, so none ought to be incurred.

This has been my view of the subject from its first origin. Every day has confirmed me that it was a just view. It has governed my conduct hitherto, and will direct the vote I shall finally give.

The question being taken on Mr. GRISWOLD'S amendment, it passed in the negative—yeas 37, nays 52, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, Wm. Shepard, John C. Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Wm. Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip

MARCH, 1802.

Judiciary System.

H. OF R.

R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Isaac Van Horne.

Another motion was then made, and, the question being put that the said bill be recommitted to a select committee, to consider and report thereon to the House: it passed in the negative—yeas 36, nays 55, as follows:

YEAS—J. A. Bayard, Thos. Boude, John Campbell, Manasseh Cutler, S. W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Another motion was then made and seconded to amend the bill, by adding, to the end thereof, a new section, in the words following, to wit:

"And be it further enacted, That, in all cases in which proceedings shall, on the said first day of July next, be pending under a commission of bankruptcy issued from a circuit court, or a circuit judge, in pursuance of the aforesaid act, entitled 'An act to provide for the more convenient organization of the courts of the United States,' the cognizance of the same shall be, and hereby is, transferred to, and vested in, the district judge of the district within which such commission shall have been issued."

And, on the question thereupon, it passed in the negative—yeas 33, nays 36, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thos. Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent,

Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, S. L. Mitchell, Jas. Mott, Thomas Moore, Anthony New, Thomas Newton, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Israel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Horne, and Robert Williams.

Another motion was then made and seconded that the said bill be read the third time on Monday, the fifteenth instant; and, on the question thereupon, it passed in the negative.

Another motion was then made, and the question being put, that the said bill be read the third time on Monday next, it passed in the negative.

And then the said question being taken that the said bill shall be read the third time to-morrow, it was resolved in the affirmative.

WEDNESDAY, March 3.

JUDICIARY SYSTEM.

The bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes," was read the third time.

Mr. CLOPTON rose and said—Mr. Speaker, having voted against striking out the first section of the bill before you, and intending to vote for the passage of it, I wish that the principal reasons which govern me in that vote should go forth with it. I, therefore, am induced to ask the indulgence of the House for a few minutes, in order to state those reasons. In doing this, I beg leave to assure the House, that I shall not depart from the question to wander into remote regions, but shall confine myself closely to the bill itself; that I shall endeavor strictly to avoid the introduction of extraneous matter; that, as I have risen purely for the purpose of announcing the reasons on which my vote is grounded, so shall it be my particular care, not to trouble the House with any remarks which do not apply to the important subject on which that vote is to be given.

Gentlemen opposed to the bill have contended that it is both unconstitutional and inexpedient.

With respect to the latter point of discussion, I will remark, in a very few words, that I am strongly impressed with a belief, that it is expedient, from a view of the business now before the courts, which it proposes to discontinue. From the decrease of that business, which has, in fact, been brought about under the old system; from the actual decrease and great probability of still further decrease of the sources of future litigation on subjects properly of Federal jurisdiction, it appears to me, sir, that the new courts are entirely unnecessary. The document, which has furnished

a statement of the business, though it has been much cavilled at, and, by some gentlemen, declared to have been improperly communicated to the House, I consider, not only a very proper subject of communication, but as furnishing a degree of information highly useful to guide our inquiries on this point. To me, I confess, it has afforded a view of the subject, which contributes very much towards convincing me of the inutility of the courts, to discontinue which, is the object of this bill. Under these circumstances, while I believe it to be a good maxim not to multiply offices unnecessarily, nor to create expensive systems that are useless, both from political considerations and from considerations of economy, my impressions are, that the bill is expedient and proper.

On the other point of discussion, much, indeed, has been said. On this ground, gentlemen have declaimed with great vehemence. They have displayed much animation, much pathos, and with abundant zeal, they have contended that the Constitution gives no authority to pass this bill.

In support of this doctrine, that part of the Constitution is taken for its strong ground, which is contained in the first section of the third article; for reading which section, I hope the House will pardon me, although it has already been often read—in these words:

“The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.”

Gentlemen opposed to the bill have contended that this section secures a perpetuity to all courts. They have contended that, if Congress shall, at any time, have exercised the power granted in the first article—that of “constituting tribunals inferior to the Supreme Court,” by this section they are inhibited from annulling any of them on any account whatsoever. They have contended that, if a power to abolish is admitted, the independence of the judges will vanish; and that an act to abolish will deprive the judges of an absolute right, which, they say, is vested in them by this section of the Constitution.

In considering this part of the subject, I beg leave, first, to make a few remarks on that independence, a theme on which gentlemen have dilated very copiously.

Here, sir, I would beg leave to ask, are not the judges as completely guarded as they can be, against any arbitrary removal from office? It is by all acknowledged, that they are placed beyond the reach of the Executive department. They are also placed above any dependence on the Legislature for compensation for their services, by having salaries previously ascertained by law, which cannot be diminished during their continuance in office. So long as they behave well, they cannot be removed from their offices, but are entitled to hold them, if the offices exist so long, and

their salaries cannot be reduced. During their continuance, therefore, in office, while in the actual performance of their duties, the actual exercise of administering justice, the great end of securing their independence in the exercise of the duties of their offices, under the construction contained in this bill, is, I conceive, as effectually answered, as if the courts were immovably fixed, and were to exist for ever. If at any time it should be found that any of the courts are unnecessary, and that it will be more for the public interest to abolish, than to continue them, with their abolition their duties cease; and then the judges will have no services to render, and, consequently, no longer need to be shielded from improper influences.

For what reason, I would ask, was the principle of securing the independence of judges adopted? Was it not for the purpose of promoting a faithful and upright discharge of their duties in office? Surely, it was; and in order to place them beyond the power of removal by one branch of the Government, and beyond the fear of having their salaries reduced by the other branch, lest, if they should be left subject to either of those impressions, they might, in the exercise of the duties of their offices, be too much inclined to subserve the other branches; this provision, I apprehend, was inserted in the Constitution in order to secure that important object, their independence in office, which independence, I believe, remains unshaken by the principle of the bill, as to all the purposes intended, and fully satisfies the Constitution. It is sufficient that this object be secured so long as there is a necessity for it; that is to say, so long as there is a necessity for keeping up the courts. If that necessity ceases, or if courts have been created when there existed no necessity for them, can it be a rational, can it be a proper construction of this part of the Constitution, or, indeed, of any other part of it, to say that, although the courts should be unnecessary, (for such is the extent of the doctrine opposed to the bill,) and, although the independence of the judges is complete during their continuance in the offices, nevertheless, the courts must be for ever kept up? Does such a construction necessarily result from these words: “the judges, &c., shall hold their offices during good behaviour?” Is there any idea of perpetuity attached to the word “offices,” or to any other words, in this sentence? Sir, I cannot perceive any such necessary construction. I cannot perceive that any such idea is involved in the sentence. I cannot discover any natural connexion between any such idea and this sentence, or any part of it. The phrase, “during good behaviour,” is a phrase well understood, as contradistinguished from the phrase “during pleasure,” and attaches no idea of perpetuity to the office. It has no reference to the duration of the office. It imports, indeed, that the office shall be holden, not at the will of another person, but on the good behaviour of the officer. It does not follow, therefore, that the duration of the office must necessarily be commensurate with the good behaviour of the person on whom the office had been conferred, or his own

MARCH, 1802.

Judiciary System.

H. or R.

will to hold. I believe that an office may be created expressly for a term of years, and be filled by an officer to hold during good behaviour. Although he continues to behave well beyond the term, yet, at its expiration, there is an end of the office. Thus an office may be created for a term of ten years. A may be appointed to hold this office during good behaviour. You cannot remove him from this office at all, while he behaves well; but, at the expiration of ten years, the office ceases, of course. A cannot be said to be removed from the office by its cessation; for he cannot be removed from a nonentity. But if he hold at the pleasure of B, at any time before the expiration of the term, B may deprive him of the office; and then he may be said to be removed from the office, because it still continues in existence. So, also, I think, an office created for an indefinite term, as these courts are, may be discontinued; and, although the officer hold during good behaviour, he cannot be said to be removed by its discontinuance; but, if he hold at the pleasure of another person, he may, by him, be removed before a discontinuance of the office. The cases are analogous, I think, at least in relation to the effect produced by a cessation of the offices in both cases. For, as in the first case, the officer is entitled to hold the office during the term of ten years, which is the whole term of its existence, if he continues to behave well; so, in the latter case, the officer is entitled to hold during the existence of the office, if he exists so long and continues to behave well.

It will not be pretended that the tenure of the office, in the first case, is violated by its cessation at the fixed period of ten years, the term for which it was created; neither can it be justly said that, in the latter case, the tenure is violated by the determination of the office, although no definite term of existence was affixed to it at the time of its creation. In each case the tenure of the office rests equally on the ground of "good behaviour," and continues on that ground, without interruption, during the existence of the office. Hence, the words, "shall hold their offices during good behaviour," can only apply to existing offices, and designate the species of tenure, by which they are holden during their existence; but do not refer to the duration of the offices, or determine the period of their existence. The whole reasoning of gentlemen against this principle is grounded on the position, that the phrase gives a kind of perpetuity to the offices. This is, undoubtedly, begging the question. It is first assumed as a *datum* that the offices derive such a perpetuity from those words, and then it is inferred that the power of the Legislature cannot reach them. On the other hand, the converse of this proposition is believed to be true. It is contended, in favor of the bill, that a contrary construction is most natural; that it is more apparent that the words give no such perpetuity; that, consequently, the offices may be abolished by the same power which created them; and that such abolition does not violate the tenure by which the judges held them. Sir, from such a view as I have been able to take of this subject, and which I have had the honor just now

to submit to the House, this deduction appears to me to be a fair and a regular one.

I will now proceed, sir, to consider the other position, which has been laid down by gentlemen, that the judges have a vested right in their offices, from whence it has been argued, that an act to abolish courts deprives the judges of that right; and upon that ground it has been contended, that the section of the Constitution which has been cited, inhibits the Legislature from passing any such act. It has been strongly insisted that, from these words, "the judges, &c., shall hold their offices during good behaviour," the duration of the offices, that is, of the courts, shall be at least commensurate with the duration of the good behaviour of the judges; indeed, the idea seems rather to be that, when once created, they cannot be constitutionally abolished; that, so long as the judges behave well, the offices belong to them; and that the court must be continued in existence for their benefit, whether the public interest requires it or not, or even although a continuance of them should be injurious to the public interest.

In considering the force of this reasoning, though I have already troubled the House with some remarks, which, I think, apply to this point; yet, I hope to be pardoned for taking a further view of it, in doing which I beg leave to revert to the first clause of the section which has been cited—"the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." This clause, I think, in express terms, recognises in the Legislature a full power over this subject. Here, Mr. Speaker, notwithstanding what has been said to the contrary, it is clear that the words, "may from time to time ordain and establish," do leave a discretion with the Legislature; and if it were to be admitted, as seems to have been contended for, that the Constitution, by designating and limiting the jurisdiction of the Supreme Court, presupposes the expediency of establishing some inferior courts; yet I apprehend that it will not be denied, but by all acknowledged, that the clause gives to Congress a discretionary power of determining the number and the kind of courts. If so, and if, in the exercise of this discretionary power, at any time, the Congress discovers that too many courts of improper structure have been created, does there not exist in the Congress which discovers this evil, the same and equal power to correct it, with that which existed to authorize the former Congress to create those courts. To deny this, would be to deny this Congress powers of legislation equal to those which the former Congress possessed.

Again, would it not be preposterous to say, that the Congress have a discretionary power of fixing the number of courts, and yet shall exercise that discretionary power but in one way; that is, in augmenting the number, but shall never exercise it in diminishing the number. This would, indeed, be a curious kind of discretion. It would be the acme of absurdity to call it a discretion. They must, therefore, have the discretion in the latitude contended for, or they have none at all;

and, if they have any at all, they have the power to annul courts when the public good requires it, as well as to create them. It is evident, therefore, that such a discretionary power as this which I have stated does exist; and that the section of the Constitution which has been adduced for the purpose by the opponents of this bill, does not vest in the judges such a right, such an absolute property in their offices, as to place them beyond the reach of the Legislature, and so as to inhibit the Legislature from annulling such of the courts as it shall be found necessary or expedient for the public good to annul.

Further to test the accuracy of this deduction, permit me, sir, to take a view of the Constitution, and to analyze its principles. Whenever I contemplate this valuable system, I perceive, from its nature, as a Federal Government, that it is a Government of specific, limited powers. I perceive, to a demonstration, that, wherever power is granted, the benefit or good of the people must always be understood to be the primary object of the grant; that the powers granted are special powers for special and particular purposes, which are secondary objects and means of attaining the primary one; that the department to which a power is entrusted should be always responsible to the people for a proper application and use of that power towards the attainment of both objects; and that it must be competent to the particular purposes for which it was granted; otherwise, there would be a responsibility on the department, without sufficient power to discharge its obligation to the community.

I will now beg leave, sir, to apply these principles to some of the grants of power enumerated in the Constitution; and, if they apply to any, they apply to all. I will begin with the first grant.

The Congress shall have power "to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States." These are the special purposes for which the power is granted. The Congress is the department, in exercising this power, to effect these purposes in the best manner it can, and most for the interest and convenience of the people, under the restrictions specified in the grant; herein consists its responsibility. Its power must be competent to make such laws immediately connected with these objects, as shall be necessary to effect them; otherwise, it would be responsible, without sufficient power to discharge that obligation.

Passing over other grants, for the sake of brevity, I will proceed, sir, to a grant immediately relating to the subject, which has been debated.

The Congress shall have power "to constitute tribunals inferior to the Supreme Court." Here the special purpose for which the power is granted, is to "constitute inferior courts." Again, the Congress is the department to whom the power is entrusted. It is responsible to the people, to provide, from time to time, for the due adminis-

tration of Federal justice, in the best manner it can, and most for the interest and convenience of the people; and it must be competent. Here, sir, is the important point in question—it must be competent to what? According to the principles which have been stated, it must be competent to enact, from time to time, such laws immediately relating to that subject as shall be necessary and proper for making such provision; otherwise its responsibility would be unattended with power adequate to a full discharge of its obligation. The friends of the bill before you contend, sir, that towards the establishment of such a provision that bill is necessary and proper; that the interest and convenience of the people will be better served by abolishing the system than by its continuance.

But gentlemen have contended that the power in this case does not extend so far as to authorize the repeal of a law which had already created courts; for, that the clause only expresses a positive grant of power to constitute courts; that the grant merely authorizes a creation of new courts, in addition to the old, or a new organization of the old courts. Sir, the same feature marks every clause in the enumeration. How, then, is that inference drawn in this particular case? Is it contended for, because a power to repeal is not expressed in the grant? No such power is expressed in any of the grants. Will it, therefore, be also contended that a law "to lay and collect taxes, duties, imposts, or excises," cannot be repealed; or that, if any law should be passed relative to either of those subjects, it must be a law either for laying and collecting new taxes, duties, imposts, or excises, in addition to the old, or for new modelling the old ones? Sir, I can undertake to vouch for gentlemen, that such an absurdity will not be assented to; and yet I do not see how it can well be avoided, if the inference is insisted upon in the other case. The power of repeal, I believe, sir, equally exists in both cases; and the responsibility attached to this department of the Government requires an exercise of that power, in both cases, whenever it is found to be expedient for the public good, as well as in all other cases where that power exists. To deny this, would be a denial of all discretion to the Legislative department; a denial of sufficient power to support its responsibility, or to effect the purposes for which the special grants of powers had been confided to it.

Mr. Speaker, having endeavored to show (and, to my mind, the deductions are perfectly clear) that the doctrine which has been contended for by gentlemen opposed to this bill, is not supported by the section of the Constitution which has been often cited, and on which they have much relied, that it is not adverse to the principle of the bill, but reconcilable to it, and will not be violated by its operation, either as it respects the required independence of the judges, or as it regards the tenure of their offices, I will now, with permission of the House, proceed to state a few ideas resulting from a comparison of their doctrine and their construction of that section with the general principles of our Government.

MARCH, 1802.

Judiciary System.

H. OF R.

I presume, sir, that in the construction of an instrument it must ever be incorrect to give such interpretation to any clause of that instrument as would militate against the main design or end of the instrument. I apprehend that every construction to be correct must support that object. This I hold to be a good rule in respect to any instrument, however small its dignity. If this be a correct idea, of how much importance must it be to adhere to the rule in constructions of the Constitution of our Government!

Sir, I profess not to be a legal character, or to derive ideas on this head from that kind of research which professional gentlemen are accustomed to pursue. I form my opinion from the reasonableness of such a rule, and the obvious tendency of a contrary rule. I figure to myself a striking distinction between the two modes of construction. While the one cherishes and preserves the Constitution in its true and natural state of energy, the other must unquestionably enfeeble it, and eventually annihilate its vital principles.

The American mind is so well instructed in the great and essential principles which form the basis of our Government, the leading characteristic features of which are so strongly marked; its pre-eminent attributes so clearly distinguished from the genius of the corrupt systems of the old world, and springing, as it does, from the only legitimate source on earth—the people; that its first and greatest object is universally recognised, and would have required no explicit declaration to the world to show what it was, yet it is seen in the preamble of the Constitution. Among other important purposes for which the people of the United States have declared that they ordained and established this Constitution, one is to promote the general welfare. This indeed may be said to comprehend all the other specific objects of its institution; and every benefit and advantage derivable to the United States from a just and proper exercise of the powers delegated to them by this Constitution may, not improperly, be concentrated in this expression. I consider the term as synonymous with the public good. I believe, therefore, that I am bound to keep steadily in view this great object, whenever I venture to put constructions on any part of the Constitution, and to explode all constructions not compatible therewith.

Sir, when I listened (as I have with close attention) to gentlemen, and heard them contending with unusual degree of warmth, that the Legislature have no authority to annul courts, and urge for reasons that the judges have a property in their offices, I was induced to believe from the course of their arguments that, if we are to be guided by them, they would direct us to this conclusion, that, if no salaries were involved in the question, in discussing the constitutionality of this bill, proposing a repeal of "certain acts respecting the organization of the courts of the United States," there would be no inquiry into the right of merely abolishing the courts; that it is the effect which the abolition will have in re-

lation to the salaries, and not the effect which it will have in respect to the administration of justice, which is considered as rendering the repeal unconstitutional, or rather the constitutionality of it would not then be questioned at all. This object, so zealously contended for, is called the independence of the judges. It is not deemed sufficient security for their independence that they really possess it by having salaries, which cannot be diminished while they continue in office, and from which offices they cannot be removed while they behave well, even if it be to the end of their lives, if the office exist so long; but it is urged also that the offices must be perpetual, in order to perpetuate the salaries. Considering this object, therefore, as the mainspring of the doctrine which has been thus advocated, I contend, sir, that it cannot stand when tested by sound principles. I feel certain in my mind that it is incompatible with the genuine republican principle which ought ever to be maintained as a vital, essential attribute of our Government—incompatible with that fundamental principle, which makes the good of the people the paramount object of our Constitution.

In this Government, then, where the good of the people so confessedly is the supreme object, I believe it is dangerous to sanction a doctrine like this, which goes to declare that in fact no considerations of public utility are allowed by the Constitution to be of sufficient avail to abolish any courts which have once been created, merely because such abolition will affect the interest of the judges.

This doctrine may suit the genius of despotic government, wherein not the welfare of the people, but the aggrandizement of their rulers is almost the sole object; where the body of the people are indeed considered as mere property, and even preserved in existence more for the purpose of swelling the pomp, the pageantry, the splendor and magnificence of those who domineer over them than for any other purpose; where the great mass of the people, so far from having any rights protected by the Government, are the miserable subjects of oppression in every shape which fancy can devise, and which a mixture of whim and cruelty can inflict. In that kind of Government there is indeed color for a doctrine, which would perpetuate offices for the benefit of those who hold them, in exclusion of every consideration in respect to the people.

But does not the genius of our free Government utterly forbid that the interest of any individual should be consulted in preference to the good of the community, when the good of the community and the interest of that individual shall come in competition? Surely it does, and yet what is the scope of the doctrine which has been so strenuously contended for in opposition to a repeal of the law in question? It positively maintains that, although the present Legislature should have the strongest evidence that the courts created by that law are unnecessary, or even if there should be unquestionable ground to believe that a continuance of them would be injurious to

the interests of the community; nevertheless, because an abolition of them will be followed by a cessation of salaries to the judges, whereby their interests will be affected—the interests of those particular individuals shall preponderate and forbid the repeal. Does not this position flatly contradict that valuable principle of our Government, which maintains that the good of the community should be the great object of all our institutions? To my mind, this conclusion is perfectly clear, and the doctrine is in complete hostility to that principle.

If, sir, we retrace the course of discussion in this case, how has it stood? On the one hand the bill has been advocated and supported, as to its expediency, on the ground that the courts in question are unnecessary and productive of useless expense to the community; that this circumstance of itself would be good reason, if no other existed, though it is deemed that other strong reasons, taken in connexion with this, do exist, why the courts should be discontinued. On the other hand, the doctrine contended for in opposition to this bill is tantamount to a positive affirmation that, whether the courts are necessary or unnecessary, you must not put them down; that, in whatever manner the public interest may be affected, the courts must be suffered to remain in force; that the interest and convenience of the public in this case, must yield to the particular interest and convenience of the judges; that the courts were no sooner created than they were enshrined within the veil of the Constitution; that the Constitution is to them a sanctuary, which should protect them against the rude hand of legislation; that you break through this sanctuary, you sacrilegiously violate it, if you dare to enter and interrupt the permanence of the courts; that you strike with unhallowed hands, if you presume to strike out of existence any of those offices, after having once been in possession of the judges; that howmuch-soever you may think the public good requires it, however detrimental to the public interest you may think a continuance of the courts will be, you must not touch the law which creates them, at least, any further than to amend; that the courts are sacred, because, if you undertake to annihilate them, the consequence will be that the judges will sustain the loss of salaries; and you have no authority to cause such a loss to the judges, in order to promote that which you conceive to be the public good, or to discontinue what you apprehend to be injurious to the public interest; that the Constitution secures to those officers salaries for life, and inhibits you from any act, which directly or indirectly, mediately or immediately, has a tendency to operate a deprivation of them, notwithstanding any such public considerations. Such, sir, is the very essence of the arguments adduced by gentlemen opposed to the bill before you, so far as they apply to the question of constitutionality. But, good God! can this be the language of our Constitution? If every page in the volume of this sacred instrument was to be carefully unfolded, and examined with the strictest eye, is there a single sentence to be found which breathes

such language? Can the eye trace out by the most laborious search even a single word which can bear such construction? I am persuaded, Mr. Speaker, that I should commit an high offence against the sanctity of this venerable instrument, were I for a moment to indulge a belief that such a sentence, such a word, could be found.

In another point of view, Mr. Speaker, I consider the tendency of this doctrine to be highly objectionable. It is confidently believed, as has been before stated, that the courts proposed to be annulled by the operation of this bill are unnecessary; that consequently a continuance of them will be attended with an useless expense. If, then, the due administration of justice, the only object for which courts ought to be established, does not require the aid of those additional courts in order to effect that object, they must be an useless burden upon the country.

Contemplating these circumstances, therefore, as attending this case, and supposing the doctrine which has been advocated to operate as gentlemen have contended for, I am inevitably drawn to this conclusion, that, if it should be established as a principle that courts once constituted, though on experiment, cannot be abolished by any power existing under the Constitution, however unnecessary, however burdensome they may be found to be; then will the Constitution exhibit that singular phenomenon in the political world, which will be capable of producing an evil, to which it will not be capable of applying any remedy, after that evil is found to have been produced. It will then be determined that this instrument gives power to legislate so as to create an evil, and then to augment that evil, but that it gives no power to legislate so as to diminish the evil; that it authorizes an extension of the mischief *ad infinitum*, but that it denies all right or authority to contract the sphere of the mischief.

There is another consideration of no small moment, and highly worthy of remark. Public institutions in all governments, particularly in their infancy, and still more particularly in the infancy of Republics, are more or less experimental. What a solecism, then, does this doctrine present to us! It pronounces this strange and contradictory proposition that, although a system, originated merely by legislative act, should be tried and found useless, defective, or even vicious, nevertheless it cannot be subject to any radical correction; that the power which formed the system is incompetent to cure its defects; has no right or authority to ameliorate the system in such a manner or to such extent as that power should deem necessary and proper. Sir, what would be the consequence of the establishment of such a principle as this? Would it not have a direct tendency to arrest the benefits derivable to society from the progress of experience? Such undoubtedly would be its operation—an operation which would in fact go to defeat one of the greatest advantages accruing to mankind from the social state.

Experience must be acknowledged to be a great source of improvement, and it is an important attribute of free government, which requires that

MARCH, 1802.

Judiciary System.

H. OF R.

its institutions should receive such improvements, as shall be discovered from that source to be essential for the benefit of the people. Hence the doctrine, which has been contended for, presents itself in an attitude extremely hostile to that principle, inasmuch as it does not allow that extent of improvement in judicial systems which experience might dictate; for it is not to be imagined that these systems any more than other institutions can always receive the highest degree of improvement from merely a new modification of the existing arrangements; but that sometimes more radical alterations may be necessary in order to the attainment of that end. The system now proposed to be discontinued is believed to be precisely in that predicament. I am not unmindful, Mr. Speaker, that gentlemen have said that this system has not been tried long enough to test its propriety or usefulness. On the other hand it has been equally contended that the system, although it has not been for any considerable time in operation, is nevertheless attended with sufficient evidences of its inutility; and, indeed, that the circumstances of the country did not require it at the time of its creation; that it had all the marks of impropriety about it when first brought into existence. But, independently of these circumstances, I cannot accede to the doctrine. Its principle is the same, and would equally apply, if the system had been commenced with the first transactions of the Government, and had been found from an experience of twelve years to be palpably useless. It is the principle of the doctrine, which would operate universally, and apply as well to a long as to a short term of experience, that I explode.

Mr. Speaker, I have submitted to the honorable House these reasons, which are most impressive on my mind, in favor of the vote which I am about to give on the very important subject of the bill before you. Those which have reference to the great Constitutional question that has been agitated, are the result of such a view of the Constitution, as my own judgment has been able to take on a serious and diligent examination of it. On a subject so momentous, I have deemed it a duty which I owe to my country and to myself to pursue this course of investigation. While I have approached this subject with a degree of awe, I have endeavored to bestow upon it the most deliberate consideration. I have also attended closely to the arguments of gentlemen against the bill, and, weighing them dispassionately and with candor, I must say that I have heard nothing which has convinced me that the issue of my researches is an improper one; on the contrary, I feel confirmed in the belief that the doctrine which gentlemen have advocated in opposition to the bill, is neither supported by any express provision in the Constitution, nor compatible with its essential principles.

In this discussion gentlemen have taken a wide range, and travelled into fields far remote from the real object of debate. But, not content with such a latitude of argument, some have intermingled with their remarks many insinuations

that the friends of this bill are careless whether they violate the Constitution or not. Sir, I regret that sentiments so uncharitable should have been fostered. At the same time I owe it to myself utterly to deny the justice of the imputation. I owe it to myself to assert, that, notwithstanding, all the noisy declamation we have heard, and all the pompous declarations of zeal for the Constitution which have been uttered, I will not consent to yield to any of those gentlemen, either in veneration for its sacred instrument, or in solicitude for its defence against any kind of infraction. I entertain not the smallest doubt but that those gentlemen with whom I have the honor to act are animated with similar sentiments.

Sir, we have been warned, frequently and solemnly warned, against passing this bill. Alarm upon alarm, and threat after threat, have been sounded in our ears. The cry of "unconstitutionality" has been reverberated again and again. In language strong, positive, and unequivocal, we have been repeatedly told that we are about to break down one of the main pillars of our Constitution, and to unsettle the whole foundation of our Government. We have been emphatically called upon to stop—to pause—to reflect—to reconsider, and to desist from this attempt!

Sir, I should not have waited for either the threats or the admonitions of those gentlemen, if I had felt any apprehension that this bill would violate the Constitution. Far, very far be it from me to sanction any act whatsoever of such a tendency. Had I believed, or had gentlemen convinced me by argument, that the bill before you is a measure of that sort, instead of advocating, most assuredly I should give it my decided negative. If such was my impression, neither threats nor admonitions would have been necessary to impel me to take such a part. Neither threats nor admonitions can influence me to take such a part without conviction of its propriety. But far from believing that it is a measure of that description; and at the same time believing that it will be for the interest of my country so to do, I shall vote for the passage of it: and I assure the gentleman from Delaware that this vote will not be given under the impression of Executive influence; as he has been pleased very plainly to insinuate that those who favor this bill are acting under such an influence. I assure him, and I assure others, who may have thought proper to indulge similar sentiments, that although I highly revere the eminent virtue, patriotism, and abilities of the great man who now fills the Executive Department—

[Here the SPEAKER said, that remarks of this kind were not in order.]

Mr. CLOPTON, after premising that nothing could be farther from his intention than any wilful transgression of the rules of the House, observed that the remark was intended solely to vindicate himself against an imputation, in which he felt himself included, as the insinuation pointed generally to the favorers of the bill—that although with the utmost deference to the opinion of the SPEAKER, he believed that, situated as he was, the

rules of the House would justify him; he should conclude (as he was near a conclusion at the time when his remark was objected to) with saying that his object was to declare that although the great endowments of the Executive Magistrate commanded his highest esteem—although his opinion at all times merited the utmost respect, and whenever known were respected by him in the first degree; yet his decision on this important occasion, as well as on all others, had been pursuant to the dictates of his own judgment, by which he should be guided in every instance, where he should have the honor of voting in this House.

Mr. VARNUM said, he had determined to content himself with giving a silent vote on the question before the House; but the observations made by two of his colleagues, (Mr. CUTLER and Mr. HASTINGS,) induced him to make some remarks, in which he would endeavor to show, that the sense of the people, in the part of the Union in which he lived, relative to the constitutionality of the question, was, at the time of the adoption of the Federal Constitution, directly the reverse of that which they had stated. Sir, in the consideration of this subject, we ought to bear in mind the nature of the Government, and the very small number of causes cognizable in the Federal Judiciary, when compared with those cognizable in the State judiciaries, in order, with correctness, to ascertain the extent to which it is necessary to carry the one, and at the same time to avoid any encroachment on the other.

Nothing would be clearer in my mind than the Constitutional right, in Congress, to repeal the law, which the bill before you contemplates. By article first, section eighth, in the Constitution, Congress is vested with power, "to constitute tribunals inferior to the Supreme Court," precisely on the same principle, and under similar expressions, with the other powers vested by the same section "to establish a uniform rule of naturalization, uniform laws on the subject of bankruptcies;" "to establish post offices and post roads;" "to raise and support armies;" "to provide and maintain a navy," &c. And it never has been contended, that Congress have not a Constitutional right to repeal any law which may have been passed on any of these subjects, except the judiciaries, whenever the good of the public may require it. If, then, it is admitted that Congress have a Constitutional right to repeal laws which may have been passed on these subjects, when the public good requires it—and to deny it, would be subversive of the best interest of the people—from what principle of the Constitution is it found to be unconstitutional to repeal a law relative to the establishment of inferior courts, when it is conceded that the power to legislate on that subject is delegated by the Constitution on precisely the same principle with the other powers which have been mentioned? The principal reason relied on is, that the judges are to hold their offices during good behaviour, that therefore Congress have not a Constitutional right to repeal a law, which will in any degree affect their offices or salaries. But

this objection applies quite as strong against the repeal of a law on the subject of post offices and post roads, as it does in the other case, for Congress have no more power to remove the postmaster from office, than they have to remove a judge from office. The judge holds his office during good behaviour; the postmaster holds his office during the pleasure of the President of the United States; it will also, in like manner, apply against the repeal of a law upon any other subject, which creates an office held during the pleasure of the President, with equal force. So that, if the objection has any weight in the case to which it has been applied, it will go to the subversion of the principle, that Congress have a right to repeal laws on other subjects aside the Judiciary creating offices held during the pleasure of the President. If the principle is correct, where is the advantage of successive elections of the Legislature? By the third article and first section of the Constitution, it is provided that the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. Which provision, in connexion with that which vests Congress with power "to constitute tribunals inferior to the Supreme Court," clearly evince, that the Constitutional establishment of the inferior courts of the United States, places their existence exactly commensurate with the will of the Legislature, expressed by law, from time to time, as the circumstances of the country, and the public good, may require. The judges are to hold their offices "during good behaviour," but it would be absurd in the extreme to pretend, that this tenure could entitle a man to hold an office which has no Constitutional existence, and hence, the tenure of office of a judge of an inferior court of the United States cannot extend beyond the existence of the establishment by which such office is created.

But, should the construction of the Constitution contended for by the opposers of the bill prevail, it is impossible to foresee all the evils which would necessarily result. As a demonstration, I will put only one case. Suppose the existence of a war with the most powerful nation in Europe, and the necessity which in that case there might be, of the establishment of Admiralty Courts in all your principal seaport towns, for the trial of prizes which your armed vessels would send in for adjudication; and at the close of the war, when no further services could be rendered by these courts, the Constitutional question meets you, and forbids their abolition, because it will affect the salary of the judges; and the people must be taxed to pay these sinecure officers. If such was the true construction of the Constitution, in vain have the people declared in its preamble, that it is ordained and established to promote the general welfare, and secure the blessings of liberty to themselves and posterity.

In addition to the construction of the Constitution, in regard to this question, which seems to me indisputable from the face of it; the construction given it by the people, at the time of its adop-

MARCH, 1802.

Judiciary System.

H. OF R.

tion, or, in other words, the sense in which they viewed it at that time, ought to have great weight in the decision; and, perhaps, that sense will be the best ascertained, by a recurrence to the State constitutions, and the practice of the States under them. The Constitution of New Hampshire, in the thirty-seventh article of the bill of rights, very happily expresses the sense of the people of that State, in regard to the independence of the Judiciary, in these words:

"In the Government of this State, the three essential powers thereof, to wit, the Legislative, Executive, and Judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free Government will admit, or as is consistent with that chain of connexion that binds the whole fabric of the Constitution in one indissoluble bond of union and amity."

The constitution of that State vests in the Legislature, forever, full power and authority to erect and constitute judiciaries, and courts of record, or other courts, with all the powers incident to a Judicial department: and with special power to abolish the courts of common pleas, and courts of general sessions of the peace, and establish other courts with the same power, as they may, from time to time, judge expedient for the due administration of law and justice, yet the tenure of the office of judge in that State, is the same as under the United States. And, sir, notwithstanding the entire dependence on the Legislature for the existence of the courts of common pleas, I cannot imagine that the independence of the judges has ever been affected by it. There is an honorable gentleman from that State now on this floor, a judge of one of those courts, who, with his associates, had the independence, since the adoption of the Constitution, in their official capacity, to declare an act of the Legislature unconstitutional. This is a demonstration that the independence of judges does not, in all cases, depend on the certainty of holding their offices, or on receiving the emoluments thereof for life.

The constitution of New Hampshire was revised and amended shortly after the adoption of the Federal Constitution; many parts of it are assimilated to the corresponding parts in the Federal Constitution. And I cannot doubt, that the power vested in the Legislature, relative to the superior courts of the State.

In Massachusetts, the judges both of the supreme judicial court, and of the inferior courts, hold their offices under the same tenure as is by the Federal Constitution attached to the judges of the Supreme Court, and inferior courts of the United States. By the Constitution of the United States it is provided, that "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." By the Constitution of Massachusetts, it is provided that "All Judicial officers duly appointed, commissioned, and sworn, shall hold their offices during good behaviour, excepting such concerning whom there is different provision made in this constitution." This

exception has relation to justices of the peace, whose commissions are, by the Constitution, limited to seven years, and not to the judges of the supreme or inferior courts, except so far as it respects the courts of general sessions of the peace, formed by the justices within their respective counties. Therefore, the tenure of office is the same under both constitutions.

The Legislature is vested with power co-extensive with the Constitution, to establish judiciaries, and all kinds of judicial courts which the welfare of the Commonwealth may require. This power is couched in such terms as I think will not admit of a doubt, of its extending, as well to the abolition of inferior courts, which may be found not to promote the best interest of the community, as to the establishment of those which may be deemed useful and necessary. And further, the Constitution has vested the Governor, with the consent of the Council, upon an address of both Houses of the Legislature, with power to remove the judges of any of the State courts; and this may be done without assigning a reason. And in addition to this Constitutional definition of the paramount power of the Legislature over the establishment of Superior Courts, we have, from time to time, for fourteen years past, at various periods, been furnished with the most ample testimony of the uniform and invariable sense of the people of that State on the subject. A short time after the adoption of the Federal Constitution in Massachusetts, a committee appointed by the Legislature for revising the code of laws in that State, (on which committee, if my memory is correct, were all the judges of the Supreme Judicial Court) made a report to the Legislature in favor of the abolition of all the courts of common pleas in the State, and for establishing circuit courts with similar powers; this report was accompanied with bills for carrying the principle into effect; the plan would have discharged from service about sixty judges. The same system has been brought forward within these seven years, at every session of two or three succeeding Legislatures, and strongly advocated by able men learned in the law; in one Legislature, a bill for carrying the system into effect passed the House of Representatives, but failed in the Senate. In a succeeding Legislature the bill passed in the Senate, but failed in the House; and it has finally failed. But, sir, neither the judges of the supreme judicial court, who reported the system, nor the gentlemen, learned in the law, who supported it, could have entertained an idea that it was unconstitutional; and I have been repeatedly informed, from indisputable authority, that through all the different discussions of the subject, the idea of its being unconstitutional was never suggested by either party: but that the expediency of the measure was the only ground of debate, and ultimate decision.

I was not a little astonished to hear my colleagues (Mr. CUTLER and Mr. HASTINGS) avow on this floor, that the people in Massachusetts never would have adopted the Federal Constitution, had they not viewed it in the same light with

those gentlemen who are opposed to the bill under consideration, when they must have been acquainted with the State constitution, and the proceedings under it, which I have mentioned. It is in effect charging the people of that State with the inconsistency of providing by the Constitution for the establishment of inferior courts, which cannot be abolished by the Legislature during the life of any of the judges; although they might be found unnecessary, burdensome, and oppressive; and with vesting in the judges of these courts power, not only over the establishment under which they hold their offices, and over the salaries granted at a time when the establishment might be thought necessary, but a controlling, independent power over the Legislature of the Union, and all the departments in the Government, and were I to say, over the Constitution itself, I do not think it would be an exaggeration of the construction contended for by some gentlemen on this occasion.

Now, sir, while the constitution of Massachusetts vests the Legislature of that State with powers respecting Judicial establishments under the State government, exactly similar to the powers vested in Congress, by the Federal Constitution, respecting Judicial establishments under the General Government; when the people of that State have, by the same constitution, so clearly defined the independence of the judges, and their continuation in office, by the power delegated to the Governor and Council, upon the address of both Houses of the Legislature, to remove them from office, and by the paramount control vested in the Legislature over the establishments by which their offices are created; and when it is so well known that the judges of the supreme judicial court, and gentlemen of high legal knowledge and reputation, have, for many successive years and under different aspects, been advocating the abolition of the inferior courts in the State, and the people of all classes and denominations, constant and uniform in exhibiting their unanimous acquiescence in the constitutionality of the measure; what foundation is there for the declaration made by my colleagues? Is there the least color of reason for the assertions? But, on the contrary, is it not fair and candid to conclude, from the statement which has been made, that the people of Massachusetts entertain the same opinion as to the constitutionality of the repeal contemplated, which has been avowed by the friends to the bill now under consideration on this floor? Is not this the only conclusion which can result from the evidence in the case? I presume, sir, that every impartial inquirer will answer in the affirmative; and, may I be permitted further to observe, that the people of Massachusetts are true friends to order and good government, strongly attached to the Federal Constitution; and whatever may have been their difference of sentiment in regard to the administration of the General Government, this difference has arisen, generally, from honest motives, grounded on the broad basis of general welfare, although accompanied with a diversity of ideas as to the mode of administration best

calculated to effect this object. They are industrious and economical, and wish to have their honest earnings secured to them by the Government; but they have an innate opposition to useless expensive establishments and sinecure offices. In Rhode Island all the Judicial officers are chosen annually by the Legislature, yet we do not hear any complaint of the want of independence in the judges.

But, sir, when I recur to the charter under which the people act in the State of Connecticut, I am astonished to find the members from that State in Congress, advocating the necessity of an absolute independence in the judges of the inferior courts of the United States; not only an independence above the control of the Legislature, but completely dictatorial of its measures, in order, as they tell us, to secure the rights of the people. It would seem, from the system of jurisprudence in that State, at the time of the adoption of the Federal Constitution, that a radical change had, since that time, taken place in the minds of the people, if they are now truly represented on this floor, which I am by no means disposed to dispute. In that State the judges of all their courts, both supreme and inferior, are appointed annually by the Legislature; and in addition to the complete control which the Legislature have a right to exercise over the judges annually, they have the power of calling to an account any court or magistrate for any misdemeanor and mal-administration; and for just cause (the Legislature being the only judges of the justice of the cause) may fine, displace, or remove them. The people of that State have continued this kind of Judiciary from the commencement of their government to this time. And, sir, what injuries have arisen to the people of that State on account of the subordinate dependence of the Judiciary on the Legislature? Has not justice been as fairly and promptly administered there as in any other State in the Union? Has there ever been a complaint that the judges were deficient in a degree of independence necessary to support the dignity of their stations, or for the impartial administration of justice? Is there a State in the Union; nay, sir, is there a State or nation in the world, where the people exhibit a greater degree of politeness, urbanity, steady habits, knowledge, and morality, than is to be found in Connecticut? And yet, sir, all these excellent qualities have been acquired under a Judicial system, the principles of which are profoundly execrated by the members from that State as well as others, and considered totally inefficacious when applied to that State, and to the other States in the Union under the Federal Government. But, sir, is it not natural to conclude, from the happy effects which the Connecticut system has had in that State, and from the universal satisfaction which, through the experience of ages, it has afforded the people, that it is at least as good as any one which can be devised? Under this view of the subject, will any rational man believe, that the people in Connecticut had any apprehension that the Federal Constitution relative to the national Judiciary now contended for at the time

MARCH, 1802.

Judiciary System.

H. OF R.

they adopted it? Or would anything save the part which the members from that State have taken in the question before you, have convinced this House that the people of that State do wish at this time to see the construction prevail, which is calculated to tax themselves, their fellow-citizens in the other States, and posterity, with the support of unnecessary, expensive judiciary systems, so diametrically opposed to that under which they live in their own State; and which is so universally approved and admired by them? In the State of Vermont the constitution provides, that "The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that 'neither exercise the powers properly belonging to the other.'" But, sir, the judges of all the judicial courts are chosen annually, or oftener, if need be, by the Legislature. From this view of the constitutions in the five Northern or Eastern States, it appears, that the Legislatures thereof are all vested with complete control over the establishments of inferior courts, either with power to abolish them, and establish others, as they may judge most conducive to the public good, or by a periodical election of the judges.

From an examination of the constitutions of the other States in the Union, and the construction which has been given to the State constitutions in some of the States, it will be found that the Legislatures in all of them have the same control over the establishment of inferior courts. It may be further observed, that the State constitutions of all the States in the Union except six, to wit: New Hampshire, New York, Virginia, North Carolina, South Carolina, and Tennessee, provide for the removal of the judges from office, either by a periodical election or by the Executive, upon an address of both Houses of the Legislature, in some cases requiring the concurrence of two-thirds of each House: and, sir, notwithstanding the State Legislatures have this complete control over the establishment of inferior courts within their respective States, independent of any regard to the judges which may hold offices under them; the judges in all the States, except where they are periodically elected, hold their offices precisely on the same tenure by which the judges of the inferior courts of the United States hold theirs.

Mr. Speaker, when the Constitutional establishment of the State judiciaries is compared with the national Judiciary, their similarity impartially viewed, and the construction which has uniformly been given to the State systems by their Legislatures and gentlemen the most eminent for law knowledge, with the perfect acquiescence of the body of the people, is attended to with candor and without party views, do they not exhibit the most incontestable evidence, that the people of the United States, when they adopted the Federal Constitution, did it with the impression that Congress was thereby vested with the power of repealing any establishment of inferior courts, which might be made by them, and afterwards prove useless or burdensome, as well as to establish such as they might consider unnecessary?

Yes, sir, this must be acknowledged by all who would not charge them with the gross inconsistency of adopting a language in their State constitutions, to which they have given one uniform construction, and precisely the same language in the Federal Constitution, with a construction diametrically opposite; which character, however it may be calculated to promote party views, I apprehend never can be ascribed to the great body of the American people. For what purpose is this might Constitutional objection set up? Gentlemen who urge it can best answer the question. But let me entreat them to consider the principles of the law about to be repealed, and compare them with the bill under consideration, by which they must see that the law which they brought forward, supported and passed the last session of Congress, embraces the same great principle which they now contend is a violation of the Constitution. That law, in express terms, abolished all the circuit courts established in the United States under the General Government prior to that time, which were then in existence, and established other circuit courts with similar power. The bill under consideration contemplates the abolition of the circuit courts established by the law of the last session, and the re-establishment of those abolished by that law. Where, then, is the difference in the principles of that law and those in the bill before you? I can conceive of none as it relates to their constitutionality. If, therefore, that law is a Constitutional law, the bill must be Constitutional also; and the same gentlemen who oppose the bill, have decided the principle and established a precedent, which will have weight in future procedure in like cases by the passage of the law. If the law is unconstitutional, those gentlemen who are now sounding the tocsin of alarm for the fate of the Constitution, are the very men who have given it the vital stab; and, even in that case, there can be nothing unconstitutional in the bill, for no one will contend that it is unconstitutional to repeal, abolish, and annul, an unconstitutional law.

As it relates to the expediency of the repeal, we should take into consideration the quantum of business to be transacted in the circuit court, and the capacity of the judges to perform it without an interference with their duty as judges of the Supreme Court and district courts; and if we bear in mind the small number of objects embraced by the Federal Judiciary when compared with those which arise under the State governments, there is every reason to believe that the state of the business in the circuit courts will, for a long time to come, be such, that it can be performed by the judges of the other courts with facility, and without any interference with their other functions. A recurrence to fact clearly evinces, that this has been the case from the commencement of the Government up to the time of the passage of the law which abolished the former system. But, say gentlemen, there have been instances in which the circuit courts have failed of transacting the business before them on account of the non-attendance of the judges. This is true; but the cir-

cumstances which produced those failures were such as never ought to be imputed to any defect in the system. Over such an extensive territory as the United States, it is to be expected, that some failures of this kind will occur, unless indeed you do carry those courts to every man's door, (as some gentlemen have been pleased to express themselves,) and appoint your judges so nigh the place of holding the courts, that neither freshets in rivers, the breaking down of bridges, or other natural impediments, (which often occur in the country, and especially in the Southern States, so as to prevent travelling for many days together) could operate to prevent the attendance of the judges; and, even in that case, such failures could not be entirely guarded against, for sickness, or the sudden death of the judges, over which you can have no control, might produce them. But failures of the kind have not been so frequent as was to have been expected, from the nature of the case; nor is it by any means certain that the system now in operation is better calculated to prevent them than the old one. Nothing of the kind has ever happened in the State of Massachusetts. The business in the circuit courts of that State has always been despatched with great promptitude, and without delay, unwished for by the suitors: the business has been so inconsiderable, that the sessions of the courts have always been short; and, until the existing system was brought forward in the House, I never heard a single person suggest that the old one was inadequate to the purposes of its institution.

It has been further urged, on the expediency of this question, that it was highly necessary and important to extend the powers and jurisdiction of the Federal Judiciary, on account of the inadequacy of the State courts, to decide on important questions. This, upon impartial investigation, will be found to be a frivolous, unfounded pretext. If it was in my power, I am sure, I have no inclination to derogate from the high character of the judges of the courts of the United States; nor shall I in any respect do it, when I state to you, as my opinion, that there never has been a court of the United States, of which the judges possessed more eminence of character, ability, law knowledge, impartiality, correctness of decision, and moral principle, than has adorned the bench of the supreme judicial court of Massachusetts, from its first establishment, under the present State constitution, to this time. In this opinion, I presume my colleagues will acquiesce, notwithstanding we are so unfortunate as to disagree on some other important points; and, sir, I can conceive of no reason to doubt of the other States in the Union being provided with alike respectable judiciaries; and there never has been an instance in which a State court has refused or neglected to decide with their usual promptitude, all actions which have arisen under the Federal Government, and come within their cognizance. Is there any reason, then, for extending the Federal Judiciary, on account of any judicial imbecility or inattention, in the State courts? No, sir, it would be highly derogatory to our country to admit the

idea. The observations seem calculated solely to affect the eminent and important character of the State courts; but I trust, in the wisdom of my country, that every attempt of that kind will be rendered abortive.

Much has been said on the part of the opposition in regard to the security of life, liberty, and property, afforded by the act about to be repealed, and that the repeal would lay prostrate the great bulwark of our prosperity and independence, the national Judiciary. Can gentlemen be serious in these declarations? What is the fact? Sir, it is well known, that, by the old judiciary system, about to be revived, there is a Supreme Court, to hold its sessions at the seat of Government; a district court in each State in the Union, and a circuit court in each State in the Union, except Kentucky and Tennessee; that the duties of the circuit courts were performed in the respective States by a judge of the district court, except in the States of Kentucky and Tennessee, the judges of the district courts performed the duties incident to the circuit court without the aid of a judge of the Supreme Court. By the existing system, which is about to be repealed, the Supreme Court possesses the same powers which were delegated to them by the old system; the district courts in each State also retain the same powers under the present system, which they were vested with under the former one, and the principal powers of the circuit courts in each State are the same as under the old system. Where, then, is the mighty difference in the two systems as it relates to the administration of justice? Why do gentlemen exclaim, and so often reiterate the exclamation, the destruction of the Judiciary! the destruction of the Judiciary! when they know that the bill before you provides for keeping, in full force, precisely the same Judiciary system under which the people have enjoyed so much prosperity, from the adoption of the present Government to the last session of Congress, and that the denomination of the courts are the same, and the powers similar to those designated in their favorite system? It is not my intention to dilate on the motives of gentlemen; but I must take the liberty to observe that the declarations which insinuate that the bill under consideration goes in any respect to the destruction of the Judiciary, or to impede the due administration of justice, are futile and unfounded. The old system, which the friends of the present bill wish to see revived and continued in force, was adopted after much labor and investigation, (in which I have understood that great law character, the late Chief Justice of the United States, took a conspicuous part) as the most propitious mode of administering justice under the Federal Government which could be devised. I have always conceived it much better calculated to promote general justice, by producing a greater uniformity of decision in the different parts of the Union, than that adopted the last session; because the judges of the Supreme Court, after riding the circuits, have an opportunity, on their assemblage at the seat of Government, to compare their decisions, and, from time to time, agree on uniform

MARCH, 1802.

Judiciary System.

H. OF R.

principles, to be observed, both in the decision of great questions, and the forms to be pursued in the circuit courts. No such advantages can be derived from the system of the last session, the judges of each circuit are distinct; they have no immediate connexion with the judges of other circuits, or with the judges of the Supreme Court, and therefore their rules of procedure will vary according to the practice in the State courts, and will probably be different in each circuit; their decisions will probably be different in different parts of the Union, in many instances, where the questions are similar, which will cause additional appeals, produce a delay of justice, and subject the suitors to additional expense, trouble, and fatigue; and, in addition to the reasons which have been offered in favor of the old system, the saving of an expense of more than forty thousand dollars annually ought to have some weight with faithful Representatives of a free people, unless a public debt is in fact to be considered a public blessing.

I am of opinion, said Mr. V., that some amendments which have been moved, and for which I have given my vote, would render the bill more perfect, and that it would be better to incorporate them in this bill than to make them the subject of a separate bill; but in this I have been overruled. The question now is on the passage of the bill without amendment; to which I shall give my yeas, believing the Judiciary system to be revived and continued in force by the bill, to be preferable to that which it repeals. At the same time I rest assured, that if the defects which have been named, or others, do actually exist, the wisdom of the Legislature will discover them, and speedily provide a remedy.

Mr. LOWNDES moved that the further consideration of the bill be postponed until the first Monday in December next; on which a debate of considerable length ensued; when, the question being taken thereupon, it passed in the negative—yeas 32, nays 59, as follows:

YEAS—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanael Bishop, Richard Brent, Robert Brown, Wm. Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, Wm. Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H.

Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

And, after debate thereon, the main question was taken that said bill do pass, and resolved in the affirmative—yeas 59, nays 32, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanael Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Henry Woods.

NAYS—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

[The following remarks of Mr. BACON, supplemental to his speech on the Judiciary, delivered in Committee of the Whole on the above bill, on the 17th of February, should follow the conclusion of his remarks on that subject on page 564 *ante*, immediately preceding Mr. F. MORRIS. These supplemental remarks were written out and published subsequently to the first report of his speech in the National Intelligencer, and did not find their way to the Collection of the Debates on this subject afterwards printed in an octavo volume.—*Editors.*]

Mr. BACON, in continuation.—However I may differ in opinion from some with whom I have the honor generally to agree, I may not deny, but must frankly acknowledge the right of judicial officers of every grade to judge for themselves of the constitutionality of every statute on which they are called to act in their respective spheres. This is not only their right, but it is their indispensable duty thus to do. Nor is this the exclusive right and indispensable duty of the Judiciary department. It is equally the inherent and the indispensable duty of every officer, and I believe I may add, of every citizen of the United States. The Constitution is emphatically the law of the

land. It certainly cannot be less so than the statute made present pursuant thereto. It is indeed paramount with us to all other human laws that can be made. In whatever capacity I may be called to act, where the law is to be the rule of my conduct, if two laws are found to clash with each other, in such case I cannot be governed by them both. Of necessity, therefore, I must either not act at all, or reject both, or else determine which shall give way. Should the Constitution and statute be found to contradict each other, the former, with me, must be preferred. But although this is a right of which every officer of the United States, as such, is constitutionally possessed; yet, for the due exercise of this, as also of all other such rights, he is responsible. He is not vested with a right to do wrong.

We have heard much of late about the peculiar and absolute independence of the Judiciary. Although this is a term unknown in the Constitution as applying particularly to the Judiciary department of the Government, yet it may, and ought to be admitted to be, in a certain sense, and in some respects true. The Judiciary are so far independent of the Legislative and Executive departments of the Government, that these, neither jointly or separately, have a right to prescribe, direct, or control its decisions. It must judge for itself, otherwise the decisions made in that department would not be the decisions of that, but of some other department or body of men. The Constitution, and the laws made pursuant thereto, are the only rule by which the Judiciary, in their official capacity, are to regulate their conduct. The same is the case with other departments. The Judiciary have no more right to prescribe, direct or control the acts of the other departments of the Government, than the other departments of the Government have to prescribe or direct those of the Judiciary.

The Judiciary are occasionally dependent on the President and Senate for their offices. They are in like manner dependent on the Legislature for the salaries which are assigned them for their services; although when once obtained, they cannot be deprived of either, unless in certain ways prescribed by the Constitution. The same is the case with all other offices. Some are independent in one respect, others in another.

The Judiciary are at all times dependent for their continuance in office on the judgment which the Senate and House of Representatives, acting in separate capacities, may pass on their conduct, so that whatever may be the case with judges in other countries, or in the particular States, or whatever pretensions may be made to the independence of the Judiciary of the United States the fact is, that agreeable to the Constitution our Judiciary are on the whole, much more dependent on the other departments of the Government, than the other departments, as such, are on the Judiciary. This being the case, it is in vain to exclaim about the dreadful consequences which may result from the doctrine for which we contend. For my own part, after all that I have heard, I am not at all alarmed at the imaginary

consequences that may result from this doctrine. I see, at least I think I see, much greater reason to be alarmed at the consequences resulting from the opposite doctrine. But be the consequences what they may, the only remedy must be, either to alter, or to pervert the Constitution.

If we honestly and sincerely wish to understand in what respects our judges are independent, (if indeed they are so in any,) we are to recur to the Constitution, and that alone, and not first assume an independence for them such as we would wish, and thence infer such a meaning of the Constitution as will support the independence thus assumed, as seems to be the practice of one description of men among us. This is no other than reasoning in a circle, and drawing premises from conclusions—a species of logic which I do not understand.

Much has also been said by the opposers of the bill about checks and balances, and the same improvement is made of these alleged ingredients of our Government which has been made of that independence which has been assumed for the judges of our courts. Unfortunately, however, for them, these favorite and important terms are, in the Constitution, equally unknown with the independence of the judge. Perhaps it may be true that our Government is, in some respects, a Government of what may be termed checks and balances. But what those checks and balances are, we must learn from the same authentic source from whence our information is derived respecting the independence of our judges. It is a novel kind of logic with which we find ourselves assailed. In this case, as in that of the alleged independence of judicial courts, such checks and balances as suit the taste are first assumed, and from such assumed balances and checks the meaning of the Constitution is inferred, to prove the assumed fact. In any other case, and from any other men, we should be led almost to suspect such reasoning as this to be sophistical.

If such provisions as I will name are to be denominated checks and balances, we are happy to find that the Government of the United States is filled with them. The House of Representatives may pass a bill; the Senate may negative it, and *vice versa*, the Senate and House may both concur in the passing of a bill; the President has power either to approve, or to pass a qualified negative upon the same. The Senate and House can, in their turn, provided two-thirds of each agree, destroy the whole effect of such negative. The Judiciary may judge of the meaning of a law, when made, but they cannot make the law. The judges on the trial of a cause can neither acquit nor condemn which party they please; the jurors have a power to determine, as to the suit at least. The Executive is vested with power to execute the sentence of the judge, to nominate, and by and with the advice and consent of the Senate, to appoint and commission to office, and to perform other duties assigned to him by law; but he has not power, as I contend, to create either the law, the sentence, or the office. If the Executive or Judiciary, in their official capacity, vio-

MARCH, 1802.

Judiciary System.

H. OF R.

late the Constitution, or the laws made pursuant thereto, the House of Representatives may impeach and the Senate may try, condemn, and evict from office both the President and the judge. The Senators and the Representatives are originally dependent on the people for their appointment to office, and at certain periods, are in like manner dependent for a re-appointment. If these are to be considered as checks and balances, they are abundantly provided in the Constitution. Such checks and balances as these comport with that construction of the Constitution which we contend for. If there are others, either of a similar or of a different kind, let them be first pointed out, and they will be candidly acknowledged and respectfully received, at least by me.

But, with the Constitution open before me, and knowing, as I do, that all civil rule, power, and authority that exists in the community to which I belong, are to be brought to the test of that supreme, plain, and finished instrument, I can hardly be induced to act the preposterous part of recurring to the vague and doubtful postulates of men like myself to learn its contents

THURSDAY, March 4.

Mr. GILES, from the committee appointed, on the twenty-ninth of January last, to whom was referred the census of the inhabitants of the Territory of the United States Northwest of the river Ohio, with instructions to report whether any, and what measures ought, at this time, to be taken, for enabling the people of the said Territory to form a State Government for themselves, to be admitted into the Union upon the same terms with the original States; and to whom were also referred petitions from sundry inhabitants of that Territory to the like effect, made a report; which was read, and ordered to lie on the table.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of Lyon Lehman." Whereupon, it was moved that the further consideration of the said amendment be postponed until the first Monday in December next; and, the question being put thereupon, it passed in the negative; and then the main question being taken that the House do agree to the amendment proposed by the Senate to said bill, it was resolved in the affirmative.

The House resolved itself into a Committee on the bill for revising and amending the acts concerning naturalization; and, after some time spent therein, the Committee rose and reported progress.

FRIDAY, March 5.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That a committee be appointed, on the part of this House, to join such committee as may be appointed on the part of the Senate, for the purpose of laying out, agreeably to law, the unexpended balance of a sum of five thousand dollars, heretofore appropriated to purchase books and maps for the use of the two Houses of Congress:

And, the question being taken thereupon, it was resolved in the affirmative.

Ordered, That Mr. NICHOLSON, Mr. BAYARD, and Mr. RANDOLPH, be appointed of the said committee on the part of this House, pursuant to the foregoing resolution.

The House then went into a Committee on the bill for revising and amending the acts concerning naturalization; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and what, provisions ought to be made, by law, for allowing pensions to persons who do, at this time, labor under disabilities in consequence of known wounds received in the actual service of the United States, and who have not heretofore been provided for; and that the committee report by bill, or otherwise.

Ordered, That Mr. GILES, Mr. GRISWOLD, Mr. EUSTIS, Mr. LEWIS R. MORRIS, and Mr. GREGG, be appointed a committee, pursuant to the said resolution.

The House went into Committee on the bill for the accommodation of persons concerned in certain fisheries therein mentioned. The Committee rose and reported the bill without amendment, and it was ordered to be engrossed and read the third time on Monday next.

The House went into Committee on the bill for the rebuilding the light-house on Gurnet point, at the entrance of Plymouth harbor, for rebuilding the light-house on the Eastern end of New Castle Island, for erecting a light-house on Lynde's point and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House. The said bill was then further amended; and, together with the amendments ordered to be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Claims, of the nineteenth ultimo, on the petition of Francis Duchouquet; and after some time spent therein, the Committee rose and reported a resolution; which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Francis Duchouquet, out of any moneys in the Treasury not otherwise appropriated, the sum of two hundred and ninety-one dollars and eighty-four cents, in full compensation for moneys by him advanced to redeem certain American citizens captured by the Indians.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. J. C. SMITH reported, from the Committee of Claims, on the petition of Jonathan Snowden.

The report was, that the prayer of the petition ought not to be granted. The reasons urged were, that the claim was barred by the statute of limitation.

Mr. GILES moved its reference to a Committee of the whole House, as the case was a peculiar one; the petitioner having been wounded, but whose wound was healed, and did not again break out until after the statute was passed. Being now a cripple, he prays a pension.

This gave rise to a lengthy discussion upon the general principles of doing justice to these unfortunate men, by again opening the pension list.

Mr. EVRIS strenuously pressed these cases generally upon the justice of Congress. The subject was postponed till Monday.

Mr. GILES afterward moved the appointment of a committee to consider of the subject, with leave to report a bill generally.

STATE BALANCES.

Mr. THOMAS, from the committee appointed to inquire into the expediency of extinguishing the claims of the United States, for certain balances, which, by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States, made a report, as follows:

That the following balances were, by the said Commissioners, reported to be due from the States herein-after mentioned, to wit: From the State of New York, two millions seventy-four thousand eight hundred and forty-six dollars; from the State of Pennsylvania, seventy-six thousand seven hundred and nine dollars; from the State of Delaware, six hundred and twelve thousand four hundred and twenty-eight dollars; from the State of Maryland, one hundred and fifty-one thousand six hundred and forty dollars; from the State of Virginia, one hundred thousand eight hundred and seventy-nine dollars; and from the State of North Carolina, five hundred and one thousand and eighty-two dollars.

That, as none of these States has evinced a disposition to pay any part of those balances, except the State of New York, which has been credited on the books of the Treasury for two hundred and twenty-two thousand eight hundred and ten dollars and six cents, for money expended in erecting fortifications, pursuant to an act of Congress, passed the 5th of February, 1799; but as it would be unequal to ask a further payment from that State exclusively, and as it does not appear that any measure of coercion can ever be resorted to, a further continuance of the demands against those States, the justice and equity of which they do not admit, will, in the opinion of the committee, answer no useful purpose; but, on the contrary, is calculated to occasion perpetual irritation and disquiet, as well to the creditor as to the debtor States.

The committee are, therefore, of opinion, that it is expedient to extinguish the claims of the United States for those balances, and for that purpose report a bill, which is herewith submitted.

The report was laid on the table. The bill was twice read, and committed to a Committee of the whole House on Wednesday next.

NAVY DEPARTMENT.

Mr. GRISWOLD called for the resolution of Mr. LIEB, for the appointment of a committee to consider the propriety of abolishing the Navy Department. He thought it very improper to let a resolution of the importance this was, lie on the table so many days, as it certainly excited much alarm, from the impression that it was an opening wedge to the destruction of the Navy altogether.

Mr. LEIB said it would be recollected that when he proposed the resolution, the House were engaged on the Judiciary bill, and consequently there was not time to call it up till after the subject was settled. The time since that had not allowed of it.

Mr. GILES did not wonder that a state of alarm existed, when it was recollected that, during the late debate, gentlemen had descanted so largely on the destruction of these institutions. Mr. G. proceeded to vindicate himself from the charge made by some gentlemen, during that debate, of being opposed to the Navy altogether. He declared he was not opposed to a Navy under certain restrictions. He did, to be sure, vote against building the frigates, and he was not yet sorry for it. The professed object of them was to go against the Algerines, who were at that time molesting our commerce. But what did they do towards that service? Nothing. But, added to the expense of building those six frigates, was the payment of an enormous sum of money to purchase the peace.

Mr. RUTLEDGE hoped the subject would soon be gone into; he had heard of the proposition creating alarm. The motion might now be taken up, and made the order for some other early day, which would, in some measure, subside the alarm.

Mr. GREGG hoped it would now be taken up, and decided upon, as a saving of time.

It was taken up, when Mr. LEIB relieved the embarrassment of gentlemen, and their fears of alarm, by withdrawing the resolution.

And the House adjourned.

MONDAY, March 8.

An engrossed bill for revising and amending the acts concerning naturalization was read the third time: Whereupon, a motion was made, and the question being put, that the fourth section of the said bill be re-committed to the consideration of a Committee of the whole House to-day, it was resolved in the affirmative.

An engrossed bill for the accommodation of persons concerned in certain fisheries therein mentioned was read the third time and passed.

An engrossed bill for rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor, for rebuilding the light-house at the eastern end of Newcastle Island, for erecting a light-house on Lynde's Point, and for other purposes, was read the third time, and passed.

Mr. GILES, from the committee appointed, on the fourth of January last, to inquire whether any, and what, alterations should be made in the judicial establishment of the United States, and to

MARCH, 1802.

Military Peace Establishment.

H. OF R.

report a provision for securing the impartial selection of juries in the courts of the United States, to whom was referred, on the fifth of the same month, a petition of sundry inhabitants of the State of Pennsylvania, settled on the lands claimed under grants from the State of Connecticut antecedent to the trial before the court of commissioners between the said States of Pennsylvania and Connecticut, made a report thereon; which was read, and ordered to be referred to a Committee of the Whole on Wednesday next.

Resolved, That a committee be appointed to inquire into the expediency of providing for the settlement of the claims to the lands held by settlers and traders at Detroit, and within the jurisdiction and precinct thereof, which they may have a right to, by virtue of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States; and that the said committee report by bill, or otherwise.

Ordered, That Mr. FEARING, Mr. JACKSON, Mr. TENNEY, Mr. ELMER, and Mr. BOUDE, be appointed a committee, pursuant to the said resolution.

Mr. RANDOLPH, from the Committee of Ways and Means, who were instructed to inquire into the expediency of repealing the laws laying duties on stills and domestic distilled spirits, on refined sugar, licenses to retailers, sales at auction, pleasurable carriages, stamped vellum, parchment, and paper, and postage on newspapers, made a report; which was read, and ordered to be committed to a Committee of the Whole on Monday next.

Mr. RANDOLPH, from the same committee, presented a bill to repeal the internal taxes; which was read twice and committed to the Committee of the whole House last appointed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act fixing the Military Peace Establishment of the United States," with several amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,' with several amendments; to which they desire the concurrence of this House.

Mr. J. C. SMITH, from the Committee of Claims, presented a bill for the relief of Francis Duchouquet; which was read twice and committed to a Committee of the Whole to-morrow.

MILITARY PEACE ESTABLISHMENT.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act fixing the Military Peace Establishment of the United States:" Whereupon,

Resolved. That this House doth agree to the first, second, third, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, and seventeenth amendments proposed by the Senate to the said bill.

On the question that the House do agree with the Senate in their fourth amendment to the said bill, to wit: section fourth, line second, strike out "*twenty-five*," and insert "*forty*," it passed in the negative—yeas 24, nays 59, as follows:

YEAS—Willis Alston, Robert Brown, John Campbell, John Condit, Richard Cutts, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Benjamin Huger, Charles Johnson, William Jones, John Milledge, Samuel L. Mitchell, Lewis R. Morris, Anthony New, Thomas Newton, jun., Samuel Smith, Philip Van Cortlandt, Joseph B. Varnum, Killian K. Van Rensselaer, Benjamin Walker, and Henry Woods.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Thomas Boude, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, Thomas Lowndes, Thomas Moore, Joseph H. Nicholson, Joseph Pierce, Nathan Read, John Rutledge, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Isaac Van Horne, Peleg Wadsworth, and Robert Williams.

Resolved, That this House doth disagree to the said amendment.

On the question that the House do agree with the Senate in their fifth amendment to the said bill, to wit: section fifth, line sixth, strike out "*twenty*," and insert "*forty*," it passed in the negative.

Resolved, That this House doth disagree to the said amendment.

On the question that the House do agree with the Senate in their fifteenth amendment to the said bill, to wit:

Section twenty-fourth, strike out all the words after "discharge" in the third line, and insert as follows, viz: "To each officer, whose term of service in any military corps of the United States shall not have exceeded three years, three months' pay; to all other officers so deranged, one month's pay of their grades respectively, for each year of past service in the Army of the United States, or in any regiment or corps, now or formerly in the service thereof:"

It passed in the negative—yeas 36, nays 35, as follows:

YEAS—Willis Alston, Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Charles Johnson, William Jones, John Milledge, Samuel L. Mitchell, Lewis R. Morris, Nathan Read, John Rutledge, Samuel Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Abram Trigg, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, and Benjamin Walker.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John

H. OF R.

Daniel W. Coxe.

MARCH, 1802.

Dawson, Lucas Elmendorf, Edwin Gray, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, Thomas Moore, Anthony New, Thomas Newton, jr., John Smilie, Israel Smith John Smith, of New York, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, and John Trigg.

Resolved, That this House doth disagree to the said amendment.

TUESDAY, March 9.

A memorial of sundry merchants of Charleston, in the State of South Carolina, and citizens of the United States, was presented to the House and read, praying relief in the case of depredations committed on the vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, by the privateers of the French Republic, during the late European war.

Also, a memorial of sundry inhabitants of the county of New London, in the State of Connecticut, and citizens of the United States, to the same effect.

Ordered, That, the said memorials be referred to the committee appointed on the fifth ultimo, to whom was referred a memorial of sundry citizens of the United States, and resident merchants in the city of Baltimore, to the same effect.

A petition of sundry merchants residing in the city and State of New York, importers of cotton hides, and other raw materials, for manufacture, was presented to the House and read, stating the inconveniences and expense to which the petitioners are subjected, by being obliged, under the quarantine laws of the said State, to unlade and deposit, for a limited time in every year, the said articles on Staten Island; and praying that they may be permitted to keep the same in the public storehouse of the United States erected on the island aforesaid, free from storage, during the period of such quarantine.

Ordered, That the said petition be referred to the committee appointed, on the eighth of January last, to inquire and report whether any, and what, alterations are necessary to be made in the "Act respecting quarantine and health laws."

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States.'" Whereupon,

Resolved, That this House doth agree to the first, second, and third amendments.

Resolved, That this House doth disagree to the fourth amendment of the Senate to the said bill.

The House went into Committee on the bill for the relief of Francis Duchouquet; which was reported without amendment and ordered to be engrossed, and read the third time to-day.

The House went into Committee of the Whole on the fourth section of the engrossed bill for revising and amending the acts concerning naturalization; and, after some time spent therein, the Committee rose, and reported an amendment there-

to; which was read, and being further amended at the Clerk's table, was again read, and, on the question put thereupon, agreed to by the House.

Ordered, That the said fourth section as amended, together with the bill, be engrossed, and read the third time to-morrow.

An engrossed bill, entitled "An act for the relief of Francis Duchouquet," was read the third time, and passed.

The House then went into a Committee of the Whole on the report of the Committee of Commerce and Manufacture, of the tenth ultimo, on the memorials and petitions of sundry manufacturers of gunpowder, of hats, of types, of brushes, and of stone-ware, within the United States; and after some time spent therein, the Committee rose, without coming to any decision.

DANIEL W. COXE.

The House resumed the consideration of the amendment, reported on the fourth ultimo, from the Committee of the whole House, to the bill for the relief of Daniel W. Coxe and others, in the words following, to wit;

Section first—lines fourth and fifth, strike out the words, "by Daniel W. Coxe."

And on the question that the House do concur with the Committee of the whole House in their agreement to the said amendment, it was resolved in the affirmative—yeas 43, nays 36, as follows;

YEAS—John Bacon, Theodorus Bailey, Rob't Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Condit, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, William Dickson, Lucas Elmendorf, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Heister, Archibald Henderson, William Hoge, David Holmes, Michael Leib, Ebenezer Mattoon, Thomas Moore, Joseph Pierce, Nathan Read, John Rutledge, John Smilie, John C. Smith, Josiah Smith, Henry Southard, John Stanley, John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Philip R. Thompson, John Trigg, George B. Upham, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, Thomas Boude, John Campbell, Samuel W. Dana, John Dawson, John Dennis, Ebenezer Elmer, William Eustis, William B. Giles, Edwin Gray, Andrew Gregg, William Barry Grove, Seth Hastings, Joseph Hemphill, William H. Hill, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Thomas Lowndes, John Milledge, Lewis R. Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Samuel Smith, Richard Stanford, Joseph Stanton, jr., David Thomas, Abram Trigg, John P. Van Ness, Isaac Van Horne, Killian K. Van Rensselaer, Benjamin Walker, and Robert Williams.

And then the question being taken that the said bill, with the amendment, be engrossed, and read the third time, it passed in the negative. And so the said bill was rejected.

WEDNESDAY, March 10.

A message from the Senate informed the House that the Senate insist on their fourth amendment, disagreed to by this House, to the bill entitled "An act to amend an act, entitled 'An act to

MARCH, 1802.

Military Peace Establishment.

H. OF R.

lay and collect a direct tax within the United States;" and desire a conference with this House on the subject-matter of the said amendment; to which conference they have appointed managers on their part. The Senate also recede from their fourth and fifth amendments, disagreed to by this House, and insist on their fifteenth amendment, also disagreed to by this House, to the bill entitled 'An act fixing the Military Peace Establishment of the United States.'

The House proceeded to the farther consideration of the amendment, disagreed to by this House and insisted on by the Senate, to the bill entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States;'" Whereupon,

Resolved, That this House doth recede from their disagreement to the said fourth amendment.

Mr. MITCHILL, from the Committee appointed on the thirty-first of December last, on "so much of the Message of the President of the United States, of the eighth of the same month, as relates to Naval preparations, and the establishment of sites for Naval purposes," to whom was recommended on the ninth ultimo a report on the same subject, made an amendatory report, in part, thereupon; which was read, and ordered to be committed to a Committee of the whole House on Friday next.

An engrossed bill for revising and amending the acts concerning Naturalization was read the third time, and on the question that the same do pass, it was resolved in the affirmative—Yeas 59, nays 27, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Andrew Gregg, William Barry Grove, Joseph Heister, William Helms, Joseph Hemphill, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Robert Williams, and Henry Woods.

NAYS—John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Plater, Nathan Read, John Rutledge, John C. Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

MOTION FOR ADJOURNMENT.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the President of the Senate and Speaker of the House of Representatives be author-

ized to close the present session, by adjourning their respective Houses on the second Monday in April next.

A motion was made, and the question being put, that the consideration of the said motion be postponed until the fourth Monday in the present month, it was resolved in the affirmative—yeas 46, nays 42, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, William Butler, Samuel J. Cabell, Thos. Claiborne, Matthew Clay, John Clopton, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, Charles Johnson, Samuel L. Mitchell, Thomas Moore, Thos. Newton, jun., Jos. H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, and Robert Williams.

NAYS—James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, John Campbell, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, George Jackson, William Jones Michael Leib, Thos. Lowndes, Ebenezer Mattoon, John Milledge, Lewis R. Morris, Anthony New, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Benjamin Walker, Lemuel Williams, and Henry Woods.

MILITARY PEACE ESTABLISHMENT.

The House then proceeded to the farther consideration of the fifteenth amendment, disagreed to by this House, and insisted on by the Senate, to the bill entitled "An act fixing the Military Peace Establishment of the United States:" Whereupon,

A motion was made, and the question being put that the House do recede from their disagreement to said fifteenth amendment of the Senate, it was resolved in the affirmative—yeas 56, nays 30, as follows:

YEAS—Willis Alston, James A. Bayard, Thomas Boude, John Campbell, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, William Eustis, Abiel Foster, William B. Giles, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, Wm. H. Hill, William Hoge, Benjamin Huger, Charles Johnson, William Jones, Thomas Lowndes, Ebenezer Mattoon, John Milledge, Samuel L. Mitchell, Lewis R. Morris, Anthony New, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Smith, of Virginia, Samuel Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Abram Trigg, Geo. B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAVS—John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, William Butler, Samuel J. Cabell, Matthew Clay, Thomas T. Davis, Lucas Elmendorf, William Helms, James Holland, David Holmes, Geo. Jackson, Michael Leib, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith of New York, Josiah Smith, Henry Southard, Richard Stanford, Jos. Stanton, jun., John Stewart, David Thomas, Thomas Tillinghast, John Trigg, and Robert Williams.

THURSDAY, March 11.

A memorial of the Illinois and Ouabache Land Companies was presented to the House and read, praying that Congress will be pleased to devise some speedy and effectual mode for a final investigation and decision of the claims of the memorialists, as proprietors of lands purchased from the Indians prior to the American Revolution, either in the courts of the United States, or by law commissioners, specially to be appointed for that purpose.

Ordered, That the said memorial be referred to the committee appointed on the fourth of January last, to inquire whether any, and what, alteration should be made in the Judicial Establishment of the United States, and to report a provision for securing the impartial selection of juries in the courts of the United States; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom was re-committed on the twenty-seventh of January last, their report on the memorial of Thomas K. Jones, made an amendatory report thereon; which was read and considered: Whereupon,

Resolved, That the Collector for the port of Boston and Charlestown be, and he hereby is, authorized to issue to Thomas K. Jones the debentures on ten pipes of wine, imported by said Jones in the ship Juno, Captain Thomas Dingley, and exported on the fifteenth of June last, in the ship Enterprise, Captain Hearsay, for Havana, on full and satisfactory proof being made to the said collector of the actual quantity of wine in the said pipes, at the time of their being shipped, as aforesaid: *Provided*, that every other requisite shall have been pursued, agreeably to law, for obtaining the said drawback.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

Mr. JOHN C. SMITH, from the Committee of Claims, to whom was referred on the thirteenth of January last the petition of David Mead Randolph, made a report, which was read and considered: Whereupon

Resolved, That the Secretary of the Treasury be, and he hereby is, authorized and directed to apportion to the several Marshals of Virginia, Maryland, and Pennsylvania, respectively, who have been employed or concerned in taking the late Census, the compensation allowed by the

“Act providing for the second census or enumeration of the inhabitants of the United States,” according to the service each Marshal may have performed.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with the committee appointed, on the fifth instant, on the part of this House, “for the purpose of laying out, agreeably to law, the unexpended balance of a sum of five thousand dollars, heretofore appropriated to purchase books and maps for the use of the two Houses of Congress.”

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the sum of — dollars ought to be appropriated to the erection and repair of piers in the river Delaware:

Ordered, That the said motion be referred to the Committee of Commerce and Manufactures.

Mr. JOHN COTTON SMITH, from the Committee of Claims, presented a bill for the relief of certain districts therein mentioned; which was read twice and ordered to be engrossed, and read the third time to-morrow.

Mr. GRISWOLD laid the following motion, in substance, on the table:

Resolved, That it is proper to make provision by law towards indemnifying the merchants of the United States for French spoliations, so far as claims for the same have been abandoned by the convention with France.

Ordered to lie on the table.

WYOMING CONTROVERSY.

The House went into a Committee of the Whole on the report of the committee to whom was referred the petition of sundry inhabitants of the State of Pennsylvania, settled on the lands claimed under grants from the State of Connecticut, antecedent to the trial before the court of commissioners between the State of Pennsylvania and Connecticut.

The report of the committee embraces an historical view of the Wyoming controversy, recites the act of Pennsylvania, for preventing intrusions upon land in Northampton, Northumberland, and Luzerne counties. The report then proceeds to state:

“The petitioners complain of these acts as unconstitutional, and pray that provision may be made by law for transferring the proceedings under these laws from the State Courts of Pennsylvania to the Courts of the United States; and that further provision may be made by law, that in the trial of any prosecution in virtue of the said acts the defendant may have a venire facias to summon juries from some State, other than Pennsylvania. Your committee conceive, that the right of jurisdiction was finally settled by the decree of Trenton, of the 30th December, 1783, and that by the decision of the circuit court for the district of Pennsylvania in April 1795, the whole question of the right of soil was fully taken up and decided by the court, in a case the most favorable

MARCH, 1802.

State Balances.

H. OF R.

for the defendant; which decision not having been revised and reversed, should also be considered as final and conclusive.

Your committee therefore, upon the whole circumstances of the case, are of opinion, that the measures contemplated by the petitioners would tend very much to increase the embarrassments already experienced by the State of Pennsylvania, in extending and enforcing its lawful jurisdiction over the lands in question, and that it would be highly inexpedient on the part of the United States to interfere with the regulations of the States in that respect, or to countenance, by any means whatever, any circumstances of insubordination to the State authority.

Your committee are therefore of opinion, that the prayer of the petitioners ought not to be granted."

After a debate, the Committee rose and reported their agreement to the report.

A motion was made and lost to recommit the report to a select committee.

It was then moved to postpone the further consideration of the report till the last day of November next. Not carried.

The question was then taken on concurring with the Committee of the Whole in their report, by yeas and nays, and agreed to—yeas 60, nays 17, as follows:

YEAS—Willis Alston, John Archer, Theodorus Bailey, James A. Bayard, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Andrew Gregg, Seth Hastings, Joseph Heister, William Helms, Joseph Hemphill, William H. Hill, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Lewis R. Morris, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, Samuel Tenney, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, and Henry Woods.

YEAS—John Bacon, Phanuel Bishop, Thomas Claiborne, Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, Archibald Henderson, John Pierce, Nathan Read, John Rutledge, John Cotton Smith, Benjamin Tallmadge, Thomas Tillinghast, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

And so the petition was rejected.

FRIDAY, March 12.

An engrossed bill for the relief of the marshals of certain districts therein mentioned was read the third time and passed.

The House being informed that NARSWORTHY HUNTER, the Delegate from the Mississippi Territory, in this House, died last evening:

On motion, it was

Resolved, That a committee be appointed to take order for superintending the funeral of NARSWORTHY HUNTER, late a Delegate from the Missis-

sippi Territory; and that this House will attend the same.

Resolved, That the members testify their respect for the memory of the said NARSWORTHY HUNTER, by wearing a crape on the left arm, for one month.

Resolved, That the SPEAKER of this House address a letter to the Governor of the Mississippi Territory, to inform him of the death of NARSWORTHY HUNTER, the Delegate from the said Territory in this House, in order that measures may be taken to supply the vacancy occasioned thereby.

Ordered, That Mr. LEIB, Mr. DAVIS, Mr. HOLLAND, Mr. RUTLEDGE, and Mr. LEWIS R. MORRIS, be appointed a committee, pursuant to the first resolution.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill for the relief of Thomas K. Jones; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. JACKSON, from the committee to whom was re-committed, on the fifth ultimo, the bill for the relief of Isaac Zane, reported an amendatory bill; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making an appropriation for defraying the expenses which may arise from carrying into effect the Convention made between the United States and the French Republic; which was read twice and committed to a Committee of the whole House on Monday next.

Ordered, That a message be sent to the Senate to inform them that the funeral of NARSWORTHY HUNTER, late a Delegate from the Mississippi Territory, who died last evening, will be attended to-morrow, at twelve o'clock; and that the Clerk of this House do go with the said message.

STATE BALANCES.

The House resolved itself into a Committee of the Whole on the bill to extinguish the claims of the United States for balances reported against certain States by Commissioners appointed to settle the accounts between the United States and the individual States.

Mr. THOMAS.—Mr. Chairman, I rise, with a great deal of diffidence, to deliver my sentiments on this floor, as I have not been accustomed to public speaking; however, a sense of my duty as a Representative of the United States, as well as the immediate Representative from the State of New York, impels me, on this occasion, to ask the indulgence of the Committee while I make a few remarks on the subject of the bill now under consideration.

Sir, a number of the debtor States, and particularly the one which I have the honor to represent, have always believed that they were prodigiously injured in the settlement that was made; they have always believed that there was something radically wrong, grossly unequal, in the accounts exhibited by the individual States, and allowed by the Board of Commissioners; in this belief, they have frequently called for information

H. OF R.

State Balances.

MARCH, 1802.

on the subject, for a re-examination of that settlement, and have as often been denied it.

Much might be said to prove that the very economical system adopted and adhered to by the State of New York in limiting the prices of produce, and in liquidating the accounts of her citizens for supplies furnished during the Revolutionary war, operated particularly prejudicial to that State in the settlement. I shall, however, waive any remarks on this for the present, and confine myself principally to the rule which was adopted for apportioning the expenses of the war among the several States. Sir, the Committee will recollect that by an act of Congress passed in the year 1789, the enumeration of inhabitants made in the year 1791 was adopted as the rule for apportioning this debt among the thirteen States.

I shall in the first place examine the original contract entered into by these States, and under which these expenses were incurred, and then endeavor to show the effect which, adopting an enumeration made seven or eight years after the close of the war, had upon the several States different from what the same rule would have produced had the apportionment been made according to the numbers in each State at that period, say 1784.

In the year 1778, the people of these States entered into a Confederation for various purposes, one of which was, to prosecute the war against Great Britain. In the eighth article of this compact it was expressly agreed that—

“All charges of the war, and all other expenses that should be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, should be defrayed out of a common treasury, which should be supplied by the several States in proportion to the value of all lands within each State granted to or surveyed for any person as such lands and the building and improvements thereon should be estimated, according to such mode as the United States in Congress assembled, should from time to time direct and appoint.”

This, Mr. Chairman, was the agreement under which this debt was incurred; and here allow me to ask the honorable gentleman from Massachusetts (Mr. BACON) whether he was correct when he told us the other day that this settlement had been made agreeably to the articles of Confederation; and, further, whether, agreeably to that compact, the State which he represents would have been allowed for her losses in the Penobscot expedition, which has enabled her to become a creditor State of upwards of one million two hundred thousand dollars, and more than one-third of the whole amount of the balances. Sir, had the original agreement under which these expenses were incurred been adhered to in the settlement, no one ought now to complain; but, in order to comply with it, the expenses of the war ought to have been apportioned among the several States according to the value of the lands and buildings at the time these expenses were incurred, and I do contend that the period immediately after the termination of the war was the only proper one for carrying into effect this stipulation. I am per-

suaed that no gentleman on this floor will deny that the existing circumstances of the several States at that period was the most proper to determine the just proportion which each State ought to pay of these expenses, by whatever rule might be adopted. Admitting, then, that Congress had the power, and it was judged expedient to deviate from the original contract, and adopt as the rule of apportionment the enumeration of inhabitants as a more practicable one, ought it not to have had reference to the numbers in each State at the close of the war? Most unquestionably, Mr. Chairman, no gentleman will deny this, and that the year 1784 was the proper time. It may, however, be said that no enumeration was made till the year 1791, seven years afterwards. I grant it. But will this alter the justness of my position? Not at all. It must be obvious in the mind of every gentleman who has reflected on the subject, that the relative numbers in each State had changed materially between the year 1784, when this settlement ought to have been made, and the year 1791, when it was made. In order to establish this fact, I have adopted this method; I have admitted what I believe every gentleman who hears me will, without hesitation: that there has been no material variation in the increase of population in the several States since the year 1784; that the increase was nearly, if not correctly, in the same ratio between the years 1784 and 1791, with the increase between the years 1791 and 1801; that is, that the relative increase of population in the several States was nearly, if not correctly, in the same proportion for the seven years previous to the year 1791 that it was for the ten years subsequent to that period.

This I have established as my data, by which I have ascertained the numbers in each State in the year 1784, and having apportioned the whole debt among the several States, according to the enumeration, I find the following to be the result:

That the State of Massachusetts, instead of being a creditor of \$1,248,801, she would have been a creditor for only \$863,267; that the State of Connecticut, instead of being a creditor State of \$619,121, she would have been a debtor State for \$235,419; that the State of Rhode Island, instead of being a creditor State for \$299,611, she would have been a debtor State for \$13,212; that the State of New Jersey, instead of being a creditor for \$49,030, she would have been a debtor State for \$300,201; that the State of New York, instead of being a debtor State for \$2,074,846, she would have been a creditor State for \$965,921, &c.

This, Mr. Chairman, would have been the situation of those States had the apportionment been made according to the numbers in each State in the year 1784. As for the accuracy of this statement I think I can with safety pledge myself; it is, however, open for any gentleman who will give himself the trouble to examine it for himself. The principles on which it has been made cannot be disputed, as it respects the State of New York; if anything, it does not make enough in her favor, for it is evident that the emigration into that State from the neighboring States was greater for the

MARCH, 1802.

State Balances.

H. OF R.

first seven years after the close of the war than it has been for any subsequent seven years.

Will, then, Mr. Chairman, any gentleman hesitate a moment to pronounce the rule of apportionment which was adopted unjust, unequal, and erroneous? Will any gentleman say, sir, that the rule of apportionment was a just one, or as just as the nature of the case would admit of, which brought the State of New York in debt upwards of two millions—two-thirds of the whole amount of the balances—when, on the principles of righteousness, on the principles of legal contract, or any other principles, but an unauthorized act of Congress, that State would have been a creditor State for nearly a million?

Mr. Chairman, I admit, as the settlement has been made, and the creditor States have received their balances, that it would be improper now to take up this subject *de novo*, and endeavor to compel those States to refund what they have received more than they were entitled to; this is not expected—it is not asked; all that is asked of you is, that you render such justice to those injured States as the present situation of this transaction will admit of; this is all that is contemplated in the bill now before us.

Sir, as to the present situation of the State of New York with respect to this subject, she has not acknowledged the justice of this claim, as was stated by some gentlemen when this question was under consideration the other day; she has uniformly denied it. It is true she did comply with the act of Congress passed in February, 1799, and has expended and been credited on the books of your Treasury for \$223,810 under that act; she did this, not from a conviction of the justice of the claim, but from motives which have always actuated her conduct, as well during the Revolutionary war as since, to do everything in her power for the general welfare of the nation, whenever its exigencies required it, and also from an expectation that the other States called debtor States would do the same, and thereby get rid of an evil which she considers as having a tendency to alienate the good will and cordial affection so necessary to be cherished between these States—a cause, sir, which has and will, while it is suffered to exist, occasion perpetual irritation and disquiet, as well to the creditor as to the debtor States, and which may at some future period produce consequences more fatal.

I say, sir, these were her motives in agreeing to that measure; and did she not evince a magnanimous spirit by doing it? A willingness to suffer an additional injury herself, rather than not remove a cause which might put in jeopardy the peace and harmony of these United States? But, Mr. Chairman, as it can answer no useful purpose to have the remainder of the money expended in the manner directed by the act—and this I am warranted in stating to the Committee, not only as my own opinion, but as the opinion of the gentleman who was employed under Government as an agent or commissioner to superintend the expenditure already made—as no other State has evinced a disposition to extinguish these balances by pay-

ing any part of them, or by complying with any of the terms heretofore offered by Congress; and as it must be admitted on all hands that Congress have no power to effect it by eviction, I ask gentlemen if it would be just or reasonable that the State of New York, who has been injured more in the settlement than any other State in the Union; who has already paid upwards of \$220,000 towards these balances, and who is the only State that has, or in all probability ever will, pay a cent towards them—I say, I ask gentlemen of the Committee whether it would be just that that State should now be driven to one of two alternatives; either to draw near a million of dollars from her citizens and expend it where it will answer no useful purpose to the State nor to the nation, or to withhold any further appropriations, and thereby incur the imputation of having violated her faith? I call upon gentlemen seriously to consider whether it would not be prodigiously unjust to hold that State in this predicament; whether it would not be adding injury to injustice to do it?

Mr. Chairman, I do flatter myself that the representatives of this nation, convened here to legislate on fair and equitable principles, will not suffer a new wound to be inflicted on that State, but that they will unite with one accord in passing the bill now before us, and thereby not only heal the one already made on that, as well as several of her sister States, but remove a rock which may endanger our Federal ship.

The bill was supported by Messrs. RANDOLPH, VAN RENSSELAER, HILL, VAN NESS, GREGG, BAYARD, SMILIE, MACON, S. SMITH, CLAIBORNE, and HOLLAND—and opposed by Messrs. ELMER, BACON, EUSTIS, HASTINGS, and BUTLER.

The question was then taken on the Committee rising, and reporting the bill without amendment, and carried—yeas 47, nays 33.

A motion was then made that the bill be engrossed for a third reading on Tuesday, and carried—yeas 47, nays 35.

A motion was then made by Mr. LEIB to recommit the report of the select committee on which the above bill was founded, in order to correct an erroneous statement in relation to Pennsylvania.

—
SATURDAY, March 13.

The House met, but no quorum being present, adjourned till Monday.

—
MONDAY, March 15.

Mr. GREGG, from the committee appointed, on the seventh of January last, “to inquire whether any, and, if, any, what, addition it may be necessary to make to the military stores of the United States,” made a report; which was read, and ordered to lie on the table.

On motion, it was

Resolved, That the Committee of Claims be instructed to inquire whether any further compensation, than is already provided by law, ought to be made to the Commissioners of the direct tax,

or any of them; and that they report by bill, or otherwise.

Mr. THOMAS, from the committee to whom was re-committed, on the twelfth instant, a report of the same committee, appointed "to inquire into the expediency of extinguishing the claims of the United States for certain balances, which by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States," made a report thereon; which was read, and ordered to lie on the table.

Mr. RANDOLPH called for the order of the day on the bill for repealing the internal taxes.

FRENCH SPOILIATIONS.

Mr. GRISWOLD said, that he hoped the resolution which he had laid on the table for indemnifying for French spoliations would be first taken up. It was important, before a decision was made on the repeal of the internal taxes, that the extent of indemnities made by Government should be known. He therefore moved a postponement of the bill on internal taxes till to-morrow, that, in the meantime, his motion might be acted upon. He concluded by desiring the yeas and nays.

The motion of Mr. GRISWOLD is as follows:

"Resolved, That it is proper to make provision by law towards indemnifying the merchants of the United States for losses sustained by them from French spoliations, the claims for which losses have been renounced by the final ratification of the Convention with France, as published by proclamation of the President of the United States."

Mr. LOWNDES observed, that it was nearly two months since the Committee was raised, to whom had been committed the petitions of merchants praying indemnities; notwithstanding this length of time, the Committee had not yet met. He hoped this resolution would induce the Committee to meet.

Mr. S. SMITH said, that he had presented the first petition on the subject of French spoliations, and that it had been immediately referred to a select committee, who, though they had made progress in the business committed to them, had not considered it fair to decide until all the petitions expected on the subject had been received. One indeed had been presented only this morning. Mr. S. asked if this mode was not perfectly just and fair? For himself, on this subject, he was precluded from voting, as he was deeply interested in the decision of the House. He mentioned this circumstance that the reason might be understood why particular gentlemen from different parts of the Union did not vote on this question in its several stages.

Mr. LOWNDES said he did not consider the right of deciding the principle delegated to the select committee. That must be decided in the House. It was the duty of the committee barely to make arrangements to protect the House from imposition on the score of facts. If it shall be determined by the Government, that it is improper to make compensation—though he thought such a

decision scarcely possible—the select committee may be discharged. If, on the other hand, it is thought proper to compensate, the committee may go into the investigation of details.

The order of the day is called for on repealing the internal taxes. But ought not the House to understand the amount with which the Government will stand charged on these indemnities, before those taxes are repealed? Mr. L. said he was of opinion the claims could not be rejected. They were too just to be disregarded. It was the duty of the Government to protect its citizens from the depredations of an enemy. Government, for a certain national good, had thought proper to abandon the claims of its citizens on the French Government. Surely no man would say, the Government possessed the right to seize the property of a certain description of its citizens, and appropriate it to general purposes. He repeated, that these claims must be paid by the Government. Was it not then proper to determine their extent before the internal taxes were taken off?

Mr. JOHN C. SMITH submitted it to the candor of the gentleman from Virginia to waive his motion until that made by the gentleman from Connecticut, respecting French spoliations, should be referred to a Committee of the Whole.

Mr. MITCHELL felt it an obligation, that the case of those whom he had the honor to represent, and that of the other merchants in the United States, should be taken up and receive from this House the most deliberate and serious consideration. He had before submitted to the House his ideas on the proper course to be pursued, which it was not necessary for him to repeat. He would, however, observe, that the resolution now made was so broad as entirely to defeat its object. The first reference of this business was to a select committee instructed to examine all the papers and documents in relation to it, with an instruction to report their opinion to the House; on receiving which the House might be able to come to a decision. On the other hand, the present proposition goes to commit the House on the whole extent of the subject without any examination whatever.

Mr. M. said, he would suggest a few reasons, which satisfied his mind that a decision should not be too rapidly pressed. The vessels taken by the French admitted of various classifications. One class consisted of those that were captured before the dissolution of our treaty with France; another class of those which were captured after that event; another class of those that were captured by pirates without commissions; and another class, where captures were made on account of contraband goods. All these classes involved distinct considerations; and when the subject was presented to the House in a form so complicated, was it proper precipitately to decide a principle that might bind the Government to make indemnity for all cases whatever?

Mr. M. said he had no doubt but that such property of the citizens of the United States as came fairly under the character of spoliated property, would be considered as a fit subject of in-

MARCH, 1802.

French Spoliations.

H. OF R.

demnity. He was one of those who thought that in such cases payment ought to be made. He considered the merchants as a very important class of citizens, and that their interests ought to be protected. This he thought the more necessary from the consideration of the bill on the table, which, when passed, will render the Government very dependent on mercantile credit.

Mr. M. was of opinion that the best way of accomplishing the object of the merchants was not to precipitate the subject. On the other hand, he was of opinion that the best chance of success would arise from an examination of the various classes of spoliations, from separating them from each other, thereby enabling the House to act understandingly upon them. The resolution of the gentleman from Connecticut was so vague as not to be susceptible of any distinct meaning. He hoped, therefore, the subject would be suffered to undergo a full and deliberate investigation in the select committee, which he, as a member of that committee, assured the House was progressing as fast as a sense of justice and a regard to our merchants require.

Mr. DANA.—The object of the present motion is to take up the resolution of my colleague, and to take order upon it—not to decide definitely upon it. This being the true question, I hope the gentleman from New York will not think it improper in me to say that many of his remarks do not apply to it. As the question is not whether we shall immediately decide the point, but only place it in a train for decision, it must be discussed either in a Committee of the Whole, or in a select committee; and we ask the House now to decide which, that it may be progressing towards a final decision.

The resolution states a general principle. If it is the fixed determination of the majority, without an inquiry, not to grant any relief whatever, there is an end of the business. But if you agree to grant any relief, the resolution ought to be adopted. The principle is then established of indemnifying; after which you may discriminate.

The principle on which the resolution is founded is not that Government has declined to insist upon the claims of its citizens against the French; but that it has undertaken to abandon their claims, so that no citizen can now come forward with his claim either against the French Government or any citizen of France. For this is the construction of the treaty as finally ratified by the Government. It is a complete surrender and renunciation of all demands. Among the first claims of our citizens are some of private right, which, were it not for the treaty, could be recovered in the courts of France, but which the treaty bars. This constitutes a class of claims which the Government cannot refuse to indemnify. There are other descriptions of claims which might require discrimination; in some of which the degree of compensation should be varied, and others in which there should be no compensation whatever. I think, therefore, it is proper for the Government to say the business shall be attended to; at some future time an inquiry may

be made into the nature of the various claims, This is all we ask.

Mr. GRISWOLD said that the gentleman from New York had misapprehended the order of proceeding in that House. He supposes the present resolution so vaguely worded as to be improper to be passed. But, if taken up, that very gentleman may offer any amendment he pleases. I do, however, apprehend that it is so worded as to bring the subject fairly before the House. It is worded even with caution. Its sole object is to bring the principle of indemnity before the House, unfettered, that its decision might not be embarrassed by any details; supposing there would be an indisposition in the House to pledge the nation to an unlimited extent, the words used are, "towards indemnifying." Gentlemen, therefore, who are disposed to do anything, can feel no objection to a resolution so qualified. Other parts of the resolution are worded with equal caution, so as to extend only to cases where losses are renounced by treaty. Are gentlemen unwilling to indemnify for such losses?

This is a principle proper for decision in Committee of the Whole. Why take it to a select committee? It involves no details; it requires the elucidation of no facts. We know the losses of our merchants, and we know the treaty has renounced them. The House is, therefore, prepared to say whether it will or will not indemnify. When the principle is decided, it may be sent to a select committee to settle the details. I hope that it will be taken up, and an early day fixed for consideration.

The gentleman says the committee are progressing. It may be so. Though I observe the gentleman from South Carolina says the committee has not yet met. How progressing? Without meeting? I do not understand this new mode, though I will not say that it is not a very correct mode. The gentleman further says the committee have not progressed because they wished to have first all the petitions before them; but the principle to be settled is as much involved in one petition as in all.

Mr. GREGG said he should not have risen but for the remarks of the gentleman from South Carolina, and after him those of the gentleman from Connecticut, who had stated that the committee had not met. Being a member of the committee he would inform those gentlemen that the committee had met; that they had perused a number of the papers, and had determined that it was improper to proceed until they had received documents that would show the extent of the claims.

As the business now stands, we find it referred to a select committee, instructed to examine the papers, and report their opinion thereupon. This report will form the grounds of decision for the House. Now the gentleman would wrest the business from the committee, and urge the House into a decision without any of the necessary information. The attempt was unprecedented. Mr. G. said he never knew a similar instance where the select committee had not been previously discharged.

Mr. LOWNDES rose to explain. He said that when he informed the House that the committee had never been called together, he had been induced to say so, from never having been himself notified, though a member of the committee.

Mr. BAYARD thought the motion ought to prevail for the reason assigned by the honorable gentleman from Connecticut. He has properly remarked that we are not now called on to decide the abstract question, but only to say what course of proceeding shall be pursued. The point ought now to be decided whether the business shall be sent to a select committee, or to a Committee of the Whole. The gentleman from Pennsylvania says it is altogether unprecedented to take a subject out of the hands of a select committee. But this will not be the effect of the resolution; which will only facilitate the business before the committee, and shed additional light on the path they ought to pursue. We do not wish to interfere with the operations of the committee, but to decide a question that will greatly facilitate their proceedings, and which question ought to be settled in a Committee of the Whole. It is peculiarly and strikingly proper to postpone the question of repealing the internal taxes until a decision shall have been made on these claims. Not that we are anxious to decide upon them immediately, but because we are solicitous not to prejudice all claims to indemnity by repealing the very taxes on which the indemnity must depend. Do gentlemen mean to decide at once thus precipitately against all indemnity whatever? If they are not in favor of so deciding, surely they will not be for immediately deciding on the internal taxes.

Let the gentleman from New York classify the claims as he pleases, can he tell the extent of the demands? May they not amount to five million or ten million of dollars? And if to either sum, can we with propriety dispense with the internal taxes? It appears from the report of the Secretary of the Treasury that the whole of the revenue for the year 1803 and 1804 will be wanted. If, then, these claims shall be allowed, and shall produce an increase of the public debt, the fund derived from the internal revenue will be required.

It is cruel to decide at once against the claims of our merchants. If it is predetermined not to give them relief, at least allow them the consolation of a hearing. Whoever votes for now taking up the question of the repeal of the internal taxes, votes, not only against indemnifying, but also against hearing the merchants; because he votes away all means of indemnification. It is hard, peculiarly hard, that at the moment when you are about to throw the whole burdens of the Government upon the merchants, you should deny them a hearing, an impartial hearing, of their claims. Suppose there should be a combination of these men, seeing the Government act towards them with such flagrant injustice, to refuse all importations. I ask, if you do not, by such treatment, put the Government entirely into their hands?

If gentlemen will agree to postpone the ques-

tion of internal taxes, we will agree to postpone this question, if they are not prepared to decide upon it. The subject of the internal taxes is the least pressing of all the subjects before the House. The bill, indeed, ought not pass until we know the appropriations that are necessary to be made for the present year. Have gentlemen shown, can they show, that with propriety these taxes can be dispensed with from any retrenchments that can be made in our expenditures? I do not know any official document on this point, except that of the Secretary of War, who, in his very correct report, says there will be a saving in his department of a little more or less than \$500,000; which report I confess I do not understand. The Committee of Ways and Means say there will be a retrenchment in the War Department of a sum not exceeding \$400,000; which mode of expression I do not precisely comprehend. Surely we ought to know with precision the sums that will be required for the objects of the Government before we abandon our resources.

Mr. EUSTIS thought the object of indemnity to our merchants very important both in its nature and its consequences. And, first, as to its amount, it was known to be great. The consequence of these applications will be a hearing, and procedure thereon. And the amount of the claims, as well as the nature of them, ought to have great influence on the deliberations of the House. And yet we talk of deciding the abstract question, when the very facts on which we are to decide are not before us. For it will be perceived by the public prints that the claims of the merchants of the State of Massachusetts are not yet brought forward. The necessary evidence is not before the House. I appeal to the gentlemen to know how we are to act, understandingly, if the subject be taken up now. What is the abstract question? Will gentlemen say they will pay all demands before they know anything of their nature or amount?

The gentleman from Delaware had stated fairly that this is a question whether the internal taxes shall be repealed or not. I know the internal taxes must be repealed. I consider the conversations and proceedings which have already taken place here and elsewhere as having shaken that revenue to its centre; as having placed it in such a situation as to prevent your officers from being able to collect it—its collection being peculiarly dependent upon the good faith of the community. My own opinion was, that the repeal of these taxes should have been the last act of the session; but a different aspect has been given to the subject; the people expect the taxes to be immediately taken off; and I therefore think it best to pass the bill at an early day.

The claims of our merchants are very serious, and merit great consideration. But the revenue, which gentlemen are so anxious to retain, to them will be but as the light dust in the balance. I presume that the losses of the merchants of Massachusetts alone are not less than five to ten millions of dollars. But to act understandingly upon them we must have evidence as well of their

MARCH, 1802.

French Spoliations.

H. OF R.

amount as their nature, both of which we at present want.

Mr. RUTLEDGE.—I am sorry the resolution of my honorable friend from Connecticut is not acceptable to the gentleman from New York. It is not the least indelicate to that committee. On the contrary, were I a member of that committee, I should feel infinitely gratified by it. I would ask solicitously, whether it were possible that Congress would agree to this principle before the details were gone into. We are now for giving that information to the committee.

The honorable gentleman says this resolution conveys no light. But I will say, that, if adopted, it will confer not only light, but comfort to our merchants. It will foster their hopes, and animate them to meet the difficulties under which they are staggering.

The gentleman from Massachusetts says there is no evidence of fact. What fact? Surely he will not say there is no evidence of the French having condemned our vessels, and of their having committed vast spoliation. If this were so, how happens it that an American embassy had demanded compensation; and that, on the ulterior negotiations of the Government, the Government had said we will abandon it, that we may release ourselves from guarantying to France her colonial possessions. Had this not been so, France might have called upon us to guaranty her West India possessions, and to supply her with men and money. From this situation we have been kept by those negotiations which terminated in an abandonment of the just claims of your merchants on the French Government or her citizens. And this constitutes your good bargains.

If these are facts, we possess sufficient evidence not only to justify, but to compel our paying the merchants, if under the influence of common honesty. The amount is perfectly immaterial. Whatever it is we must pay it. It is true that of the millions claimed, Government may not in law or equity be compelled to pay more than a small part. But if you establish the principle that there shall be an indemnity made, you enable your committee to devise the mode of collecting evidences of and settling the validity of the claims.

The gentleman from Massachusetts has observed that my honorable friend from Delaware has boldly avowed his object to be to refuse to repeal the internal taxes. We do avow it. For if we once repeal them, then we shall be told there is no money wherewith to pay these claims however just.

Before we repeal these taxes we ought clearly to understand the state of our Naval Establishment. We ought to see whether it is to be fostered or starved. I perceive that the Naval Committee call for \$160,000; but where is it to come from?

But the gentleman from Massachusetts says these taxes, right or wrong, must be repealed. For, he says, the public expectation has already decided the question; and that, indeed, the public officers could not now collect them. But I hope for the honor of the Government, and of the

American people, this opinion is not correct. I hope the Government has still energy enough to collect, and the people honesty enough to pay them, without resistance. In certain sections of the Union the payment has been resisted. But those who opposed were compelled to pay the tax. It is possible that in some quarters there may be further resistance. But it will be partial. The people generally will pay; and I am sorry any contrary suggestion has been made. I hope, too, the people will not be led astray either by Executive communications or conversations.

Mr. MITCHELL begged to be indulged in making a few observations on what had fallen from the gentleman from South Carolina. I do not know that these observations will satisfy his mind, but they will at least serve to justify my own character as a Representative of a portion of the Union respectable for its mercantile opulence. I believe the subject of indemnities, in the contemplation of gentlemen, has swelled much beyond its real magnitude. I believe that a large portion of losses were so covered by insurance that Government will not be obliged to pay for them. I feel as sincerely for the merchants as any gentleman; yet I do not wish to swell the subject to an improper magnitude. Suppose, as the gentlemen wish, we say we will indemnify, does that pay the claims?

Besides, it is not so evident, as some gentlemen assert, that our merchants have been deprived of valuable rights by the mode in which the French Convention has been ratified. Let gentlemen recollect the mass of depredations committed by Great Britain, and the engagements, under treaty, of the British Government to make reparation for them. Yet, notwithstanding this engagement, reparation has been to this day evaded, under the pretext that the claims under one article depend on the construction given to a preceding article. Now, suppose in the French Treaty there were the same provisions as in the British Treaty, would this have produced payment? No. The operations under the treaty might have gone on as long as under the British Treaty, with the like effect, and without any substantial provision being made. I state these circumstances barely to show that the renunciation in the French Treaty is not so grievous as some gentlemen imagine.

It is manifest that an inattention to similar claims has been considered as less a departure from right among nations than among individuals. And, judging of the future by the past, my opinion is that a retention of the article stricken out of the French Convention, would not have benefited the claims of our merchants, or afforded them any adequate eventual compensation. In France, as on the other side of the Channel, there would have been claim raised against claim, pretext against pretext, and the boards for adjusting the several claims might have been, in this case, as in the other, dissolved.

It is said by the gentleman from Delaware, that it is the object of gentleman on his side of the House to prevent a repeal of the internal taxes. Though I admire the gentleman's candor, I be-

H. OF R.

French Spoiliations.

MARCH, 1802.

lieve it is needful to repeal these laws. I believe, too, the people wish them repealed. But I further believe, that if future events shall show the necessity of restoring these taxes, the good sense of the people will restore them; and if the indemnities agreed to be made shall require them, I believe they will be restored. The work of examining these claims will be the work of years. What is the consequence? Will the present repeal of the internal taxes interfere with the doing substantial justice to our merchants? Suppose these taxes are removed, are not the products of the country increasing? and are not our resources increasing with our population? The truth is, whenever your Treasury wants a fresh supply of resources, the people will submit to what their Representatives desire. Are we to legislate for succeeding ages? No. We are to suffer our successors to act for themselves; and I have no doubt either of their ability or their inclination to do justice.

From a review of the whole subject, I see nothing to shake the confidence of the public, or to alarm the merchants. I conceive that the repeal of the internal taxes to-morrow would not be in the least injurious to the mercantile claims. When these, however, are brought forward on their substantial merits, I have no doubt they will be heard, and provided for.

The gentleman from South Carolina asks, if the internal taxes are repealed, from what source the \$160,000 for naval purposes will be drawn? I will inform that gentleman that it will be derived from an unexhausted appropriation, and that the money is now on hand.

The gentleman has insinuated the existence of a disposition that the Navy should be crushed. I know of no such intention. I believe true policy dictates that a prudent course should be pursued by this country for the protection of commerce; and that we should take a middle course between no navy and a widely extended one.

Mr. JOHN C. SMITH wished to save time, and would therefore decline entering into a discussion of the merits of the mercantile claims. He would merely observe, that a refusal to take up the subject at this time would be considered as an entire refusal to attend to it. He could not help congratulating the gentleman from Massachusetts (Mr. EVERTS) on at last finding a reason for voting in favor of the repeal of the internal taxes. But though that reason may be satisfactory to him, I must say, it is not so to me. It is, however, to be regretted that the honorable gentleman had not sooner discovered it, as it might have influenced his vote on a former occasion.

Mr. DANA.—If I understood the honorable member from New York, he admitted the propriety of making some indemnity; and if so, I could not understand why he dwelt so elaborately upon the minutiae of detail, to show why we ought not to indemnify. Nor can I yet understand him, unless his object be to let the subject sleep, and to say that the longer it is delayed, the less the chance of reparation.

The gentleman says, property insured cannot

be recovered. But is that gentleman, coming as he does from the first commercial city in the Union, yet to learn that, in the case of loss, the insurer stands precisely in the place of the insured? Is he so ignorant of this fact as not to know that the underwriter, in such circumstances, becomes entitled to the same indemnity with him who is underwritten?

With regard to the analogy attempted between the British Treaty and the French Convention, it is totally incorrect. For, in the British Treaty, we had insisted upon the claims of our merchants to reparation by Britain, or her subjects; whereas, in the French Convention, we had renounced all claim. Nor were the remarks of the honorable member more fortunate respecting the operations under the British Treaty; for he must know that our merchants have, in many cases, received compensation under it.

One concession has been made which I did not expect would be avowed so early, either by the gentleman from Massachusetts or the gentleman from New York; a concession that is founded on the principle that the House, before examining the important details which ought to regulate their decision, are so placed by the head of the Executive ministry, that certain taxes, recommended to be abrogated, must be repealed. You must repeal them. The public clamor is excited, and you must obey it. I did not suppose it would so soon have been avowed that we are under the absolute rule of Executive influence, and that, to obey it, we are compelled to perjure our understandings.

The gentleman considers himself as instructed by the will of his constituents. Forlorn, indeed, is our situation, if we are so bound down. If other gentlemen are so instructed, for myself I disclaim such degrading fetters; I disclaim the ignominious insinuation of acting either under Ministerial influence, or under popular instructions; and I can only say, I consider the confession of the honorable members from Massachusetts and New York the more precious, as coming from gentlemen so well acquainted with Ministerial mysteries.

Mr. BAYARD.—The honorable gentleman from Massachusetts has thanked me for the candor of my avowal that I am opposed to the repeal of these taxes. But I do not wish to be thanked for more than I really said. It is true, that I do not think this the proper time to repeal all of those taxes, because I do not know that Government may not want them.

Gentlemen charge us with an undue attachment to these taxes. But, why do we wish them? They bring no money to us, or to our friends. We participate not, nor expect to participate in the loaves and fishes. We expect no offices. We know that, in a few days, there may not be even a deputy postmaster on our side to share them. Why, then, can gentlemen attribute to us a wish to support taxes to feed their creatures, or to pamper their luxurious appetites? No, sir, these are not our motives. We are anxious to preserve them while they appear to us to be necessary to support the credit of the Government; because

MARCH, 1802.

French Spoliations.

H. OF R.

we are convinced that on it depends not only our present welfare, but that of future times. But the moment gentlemen, by fair calculation, show us that we can do without these taxes, that moment I will agree to take them off, and all others that they show to be unnecessary.

The gentleman from Massachusetts has broached a new species of ethics. He says, if the amount of claims shall be small, we may pay, but if large we cannot. But I will tell that gentleman I have never acknowledged such a principle of morality. I believe if the merchants have a just demand for one dollar, we must pay it; and if they have a just demand for one hundred millions, we must pay that too. Nor can I too forcibly express my astonishment at an opposite principle avowed by this House.

The gentleman says you want evidence, and therefore ought not to act. But can you examine each distinct case? If the subject goes to a select committee, and they shall be allowed years to decide, still they will have to establish some principle; for instance, that a certain description of vessels was captured unjustly by the French; that the injured merchants had a moral claim on the French Government for reparation; that the United States had bartered away their rights, and that Government, in consequence, is bound to indemnify. If the House decide that the Government is bound to relieve in one case, are they not bound to afford relief in all similar cases? Will you not, then, be obliged to make a general provision that all claims, so circumstanced, shall be allowed? Here is a great mass of claims; some made now, and some not likely to be made for years. What more, then, can you do, than decide the principle which shall be applied to them?

My opinion as to indemnity is, that whoever had a valid claim against the French Government, which the United States extinguished, has a demand against the United States, which she must satisfy. Put the case to its consequence: Will gentlemen tell me whether, according to any principle of morality, where you have taken from your citizens all chance of recovery, you are not bound to indemnify for that of which you have deprived them? Where the French Government was not bound to pay before the convention, you are not now bound to pay. So, in the case of war, you are not bound. But where the claim on the French Government was perfect, and you destroyed that claim, your obligation to pay cannot be evaded. I wish to know if the establishment of this principle requires facts?

With respect to the circumstances of particular cases, this House cannot act. On those numerous grades of credibility that will be attached to the various claims that shall be made, you cannot decide. To effect this you must establish some competent tribunal. You can establish the principle; but the details could not be settled by Congress, even if their attention were exclusively directed to that subject, in three years. Having decided the principle, it will be proper to leave the application of it to your courts of law.

Mr. BACON hoped that a great deal of time

would not be spent in exploring the secret motives of individual members. He supposed they should all stand or fall on their own consciences. He hoped, therefore, they should have the question.

Mr. S. SMITH.—I am against the proposition of the gentleman from Connecticut, because to act now upon it will be in direct opposition to the uniform order of the House. If our attention is thus to be withdrawn from every important object before us, I do not know how we are possibly to progress with the public business. I know of no case, where a particular subject has been referred to a select committee, and it has afterward been taken up in the House, while it remained with the committee. I should have understood the motion, if it had been to discharge the select committee, and to refer the subject to a Committee of the Whole.

As gentlemen, however, have taken so wide a range in the field of debate, I hope their course will produce a saving of time, and that we shall not have their speeches over again on repealing the internal taxes.

It is not my purpose, at this time, to enter into a discussion of the claims of our merchants, because I think this is not the proper occasion. But I will tell gentlemen, that if they were disposed to destroy those claims, they could not have pursued a plan more effectually calculated to do it. Had such been my intention, I would have offered a resolution so broad and vague as to alarm the whole community as to the amount of indemnity. I would have endeavored to throw the censure attached to their losses on the present Administration. I would have opposed their claims to the wish of the nation to repeal the internal taxes. All these steps I would have taken to frustrate any indemnity; and they are just the steps taken by gentlemen who profess so strong a regard for the merchants. Let me tell those gentlemen until they shall pursue a far different plan, we must doubt whether they are in earnest to pay the merchants for their losses.

If the public business is to be thus perpetually procrastinated, I hope the gentlemen with whom I act will be firm enough, after rejecting this motion, to pursue the other business even to a late hour.

The yeas and nays were then taken on Mr. GRISWOLD's motion, to postpone taking up the bill on internal taxes till to-morrow, in order to take up his resolution on French spoliations; and decided in the negative—yeas 33, nays 54, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

H. OF R.

Internal Taxes—State Balances.

MARCH, 1802.

YAYS—Willis Alston, John Archer, John Bacon, Theodoras Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Chas. Johnson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Previous to the call of the yeas and nays, Mr. S. SMITH desired to be excused from voting, as he was interested in the question.

INTERNAL TAXES.

The House then went into Committee of the Whole on the bill for repealing the internal taxes.

Mr. DENNIS moved to strike out of the first section all the words between "spirits" and "paper." He said his object was to discriminate between the tax on stills and distilled spirits, and all the other internal taxes. He believed the collection of the tax on stills and distilled spirits more difficult and extensive than that on the other objects of internal taxation. He was far from giving into the opinion that he must keep up the same number of officers to collect a part as the whole of these taxes. He believed that all the taxes excepting those on stills and distilled spirits, may be collected without any of the officers at present employed in the collection of the internal revenue. The collection may be entirely turned over to the collectors of the customs and the deputy postmasters. In case his amendment did not prevail, Mr. D. said he did not know how he should afterward vote. The collection of the tax upon stills has been said to be productive of a system of espionage hateful to a free people. His objection did not apply to the other articles. He was of opinion that, in the collection of the duties upon stills, in order to prevent frauds upon the revenue, it was necessary to enter into regulations so complex as to render the tax very obnoxious; regulations so complicated that few are competent to the understanding of them. He believed it was this which had rendered the tax so unpopular, if it really was unpopular. On the other hand, he believed that all the other internal taxes could be collected for five per cent.

Mr. D. said he did not hesitate to say that, if it should be found that the Government were possessed of more means than were required to support public credit and defray the expenses of Government, the taxes on brown sugar, salt, coffee, molasses, &c., should be reduced; instead of taking off the taxes on pleasurable carriages, sales at auction, &c., as the former were drawn principally from the poor, while the latter were paid by the rich and luxurious. It was a fact well known that

brown sugar, coffee, bohea tea, salt, and molasses, were necessities of life, and that there was scarcely a person in the community, however low his circumstances, that did not consume a portion of them.

Mr. HUGER inquired, whether the amendment could not be divided so as to take a distinct question upon each article?

The CHAIRMAN said it could.

The question was then taken on striking out refined sugar, and lost—ayes 24.

On striking out licenses to retailers, lost without a division.

On striking out sales at auction; lost—ayes 25.

On striking out pleasurable carriages; lost—ayes 22.

On striking out stamped vellum, parchment, and paper; lost—ayes 14, noes 52.

Several amendments were then made by Mr. RANDOLPH affecting the details of the bill; which were ordered to be printed, and then the House adjourned.

TUESDAY, March 16.

Mr. JOHN C. SMITH, from the Committee of Claims, who were instructed on the 29th of January last, "to inquire into the expediency of making provision, by law, for the payment of such loan office and final settlement certificates as may have been lost, and for the payment or renewal of which application was made prior to the twelfth day of June, 1794," made a report thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom were referred, on the fifteenth ultimo, such parts of a petition of sundry inhabitants of the county of Fairfield, in the Northwestern Territory of the United States, "as relates to the payment of interest on the principal amount of the purchase money due by the petitioners to the United States, for lands in the said Territory, until the instalments of the principal shall, respectively, become due, and to a revision and amendment of the laws of Congress respecting the purchase and title of the said lands," made a report thereon; which was read and considered: Whereupon.

Resolved, That so much of the said petition, referred to the Committee of Ways and Means, as hereinbefore recited, ought not to be granted.

STATE BALANCES.

The bill for extinguishing State balances was read a third time, when Mr. DAVIS moved its postponement to the first Monday in November.

This motion was supported by Messrs. DAVIS, BACON, ELMER, and GODDARD, who declared themselves adverse to the passage of the bill; and opposed by Messrs. BAYARD, T. MORRIS, RANDOLPH, and NICHOLAS, who declared themselves in favor of the bill.

Mr. GRISWOLD delivered his sentiments against the postponement, declaring, however, his determination to vote against the passage of the bill.

MARCH, 1802.

Internal Taxes.

H. OF R.

The question of postponement was taken by yeas and nays, and carried—yeas 48, nays 42, as follows:

YEAS—John Bacon, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, Ebenezer Elmer, William Eustis, John Fowler, Calvin Goddard, Edwin Gray, John A. Hanna, Seth Hastings, Joseph Heister, William Helms, Benjamin Huger, George Jackson, Michael Leib, Thos. Lowndes, Ebenezer Mattoon, John Milledge, Thomas Moore, Anthony New, Joseph Pierce, Nathan Read, John Smilie, Israel Smith, John C. Smith, Josiah Smith, Henry Southard, Joseph Stanton, jr., Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Abram Trigg, John Trigg, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, Theodorus Bailey, James A. Bayard, Samuel W. Dana, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Abiel Foster, Andrew Gregg, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, William H. Hill, James Holland, David Holmes, Charles Johnson, William Jones, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, John Stanley, John Stewart, John Stratton, David Thomas, Philip R. Thompson, Philip Van Cortlandt, John P. Van Ness, Killian K. Van Rensselaer, Benjamin Walker, Robert Williams, and Henry Woods.

INTERNAL TAXES.

The House went into a Committee of the Whole, on the bill for repealing the internal taxes.

The amendment offered yesterday by Mr. RANDOLPH, and other amendments offered by him, affecting the details of the bill, were agreed to without a division: when the Committee rose and reported the bill and the amendments.

The House immediately took up the report of the Committee, and agreed to all the amendments except one, with other amendments.

Several additional amendments were suggested, when Mr. DENNIS moved to recommit the bill, for amending the details, to the Committee of Ways and Means.

The motion was supported by Messrs. DENNIS, DANA, GODDARD, and BAYARD; and opposed by Messrs. RANDOLPH, SMILIE, and VARNUM.

Before the question was taken an adjournment was called for, and carried.

WEDNESDAY, March 17.

Petitions of sundry inhabitants of the Territory of the United States Northwest of the river Ohio, were presented to the House and read, stating their disapprobation of certain proceedings of the Legislative and Executive authorities thereof; and praying that a State Government may be established for the people of the said Territory, to be admitted into the Union upon the same terms with the original States.—Referred.

Mr. WADSWORTH, from the committee appointed, on the twenty-fourth ultimo, presented a bill to alter the time of holding the district court in the district of Maine; which was read twice, and ordered to be engrossed and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to empower John James Dufour, and his associates, to purchase certain lands;" to which they desire the concurrence of this House.

Mr. GREGG observed that the acts of Congress respecting a marine corps allowed the President to dismiss the privates, but not the officers; in consequence of which restraint, though a considerable reduction of the men had taken place, all the officers were yet retained. He thought it proper that the President should have the same power to reduce the officers as the men. He, therefore, moved the following resolution:

Resolved, That a committee be appointed to inquire, whether any, and, if any, what alterations are necessary in the several acts relative to the establishment of a marine corps, and in an act fixing the rank and pay of the commanding officers of the corps of marines; and that the committee be authorized to report by bill or otherwise.

Ordered to lie on the table.

Mr. GREGG further offered the following resolution:

Resolved, That the President of the United States be requested to communicate to this House such information as he may have received, relative to the copper mines on the south side of Lake Superior, in pursuance of a resolution passed the 16th day of April, 1800, authorizing the appointment of an agent for that purpose.

Ordered to lie on the table.

Mr. GRISWOLD observed that the general estimate of the Secretary of War, made to the Committee of Ways and Means, on the saving that would probably result from the reduced Military Establishment of the present year, which made it amount to the sum of four or five hundred thousand dollars, was to him not perfectly satisfactory. He therefore moved that the Secretary of War be directed to lay before this House a statement of the number of troops which were actually in the pay of the United States during the year 1801, together with the expense which has in fact arisen for the support of the Military Establishment for the same year.

Mr. RANDOLPH remarked that, as the Committee of Ways and Means required no other than the result of the saving likely to arise from the military reduction, the Secretary had given all the information asked for.

The consideration of this subject was postponed till to-morrow.

INTERNAL TAXES.

The House then took up the bill for repealing the internal taxes.

Mr. RANDOLPH hoped the motion, made yesterday, to recommit the bill, would not prevail, as he

H. of R.

Internal Taxes.

MARCH, 1802.

was prepared to offer immediately to the House the amendments which gentlemen required.

The question on recommitment was then taken, and lost without a division.

Several amendments, relating to the details of the bill, were made.

When Mr. DENNIS renewed the motion made by him in Committee of the Whole, somewhat varied, viz: to strike out of the repealing clause all the articles of internal taxation, excepting "stills and domestic distilled spirits, and stamped vellum, parchment, and paper."

He moved that the question be taken by yeas and nays on each article distinctly.

The question was accordingly stated on striking out "refined sugars."

Mr. S. SMITH desired to be excused from voting, as he was interested in a sugar refinery.

The question was put and lost—yeas 30, nays 54, as follows.

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. DENNIS then moved to strike out "refined" for the purpose of inserting "brown" sugar. He said he did this the more forcibly to contrast the votes of gentlemen who were in favor of a discrimination between the necessities and luxuries of life.

Mr. CLAIBORNE desired the Speaker to read the title of the bill; which he did, as follows: "a bill for repealing the internal taxes;" when Mr. C. asked if brown sugar was within the meaning of the term "internal taxes."

Mr. DENNIS replied that it was always in order to amend the title of a bill.

The SPEAKER declared the motion out of order, as a decision had just been made against striking out the whole term "refined sugars."

Mr. RANDOLPH wished with the gentleman from Maryland, (Mr. DENNIS,) a distinct question to be taken upon each of the articles of in-

ternal revenue. He believed the abolition of one constituted the most forcible reason for repealing the whole. If there were a disposition to abolish taxes on the necessities, and to retain those on the luxuries of life, let us see who are for the one, and who for the other.

Mr. DENNIS, equally with the gentleman from Virginia, was for a discrimination. In compliance with the decision of the Chair, he would withdraw his original motion, and now move to strike out "licenses to retailers," in order to insert "bohea tea."

Mr. VARNUM here asked for a division of the question.

The SPEAKER said it was indivisible.

Mr. HUGER said it had been his intention, after the motions before the House were disposed of, to have moved to insert an amendment for a reduction of the duty on salt; he inquired if he was not precluded from so doing by the decision of the Chair.

Mr. DENNIS replied that it was his purpose to move the insertion of "salt," in the room of "pleasurable carriages."

Mr. HUGER observed that the principal object of his motion would be to show that the amount of duties on salt was about equal to the whole saving of this bill.

The question was then taken by yeas and nays, on striking out "licenses to retailers," in order to insert "bohea tea," and lost—yeas 31, nays 57, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, L. R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, Wm. Jones, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. DENNIS next moved to strike out "sales at auction," and insert "coffee."

A division of the question was called for, which the Speaker declared not to be in order.

Mr. EUSTIS inquired whether it could be in or-

MARCH, 1802.

Internal Taxes.

H. OF R.

der to insert expressions that might grossly vitiate the bill, and wrest it from its main purpose? He said this was not the place to contrast the relative merits of a tax upon sales at auction, and a duty upon coffee. He had not the least objection, at a proper season, to afford gentlemen the opportunity of contrasting the advantages attending the repeal of these taxes, and the duties on other articles.

Mr. S. SMITH appealed from the decision of the Chair, on the division of Mr. DENNIS's motion.

Mr. THOMAS MORRIS called for the yeas and nays.

Mr. S. SMITH called for the reading of the rule which declares, that "any member may call for a division of a question where the sense will admit of it."

The question was then taken by yeas and nays on concurring in the decision of the Chair, and lost—yeas 40, nays 48; and the motion was determined to be divisible.

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Lucas Elmdorf, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, Joseph H. Nicholson, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Smith, of New York, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Robert Williams.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William H. Hill, James Holland, George Jackson, Charles Johnson, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Isaac Van Horne.

The question was then stated on striking out "sales at auction."

Mr. HUGER said he entertained doubts of the propriety of repealing the internal taxes. If those to whom has been devolved the management of our public concerns, say they can spare six hundred and fifty thousand dollars, the amount of these taxes, be it so. But if this sum can be dispensed with, he said he was anxious that at least a part of it should go to relieve those who do not pay a large share of the internal taxes from the burden of other taxes. He was solicitous, therefore, to give his vote in such a way as to exhibit to his constituents his efforts to reduce the duty upon salt and other necessities of life.

Mr. S. SMITH remarked that the gentleman from South Carolina doubted the possibility of sparing six hundred and fifty thousand dollars. If

he really entertains such a doubt, it must be entirely destroyed when he learns that the duty on salt, which he wishes to take off, alone amounts to above seven hundred thousand dollars!

Mr. HUGER replied that he was not so anxious for popularity as some gentlemen. With regard to salt he only wished to reduce the duty so as to affect the revenue about two hundred and eighty thousand dollars.

The question was then taken by yeas and nays on striking out "sales at auction," and lost—yeas 32, nays 58, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benj. Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmdorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

THE SPEAKER.—The question now is on the remainder of the motion to insert "coffee."

Mr. GRISWOLD observed that the gentleman from Massachusetts had supposed this was not the proper place to decide whether we will reduce the duties on imported goods. But if the word "coffee" be inserted, the effect will be that all duty upon that article will cease. Gentlemen may suppose that it is not proper to dispense with the whole duty; but if it be repealed, there will be nothing to prevent the imposition of a new duty by a new bill. Mr. G. thought the present duty too high; he thought it would be productive of smuggling, and he thought it oppressive.

Mr. S. SMITH said the present, in his opinion, was not the proper place to introduce the repeal of the duty on coffee. It will be remembered that early in the session he had brought forward a resolution, which was committed, to inquire whether any and what alterations were necessary in the laws imposing duties on imports. He then stated that he was disposed to reduce the duty on coffee, as now proposed by the gentleman from Connecticut, (Mr. GRISWOLD,) and when that question should come in the proper place, he would be

H. OF R.

Internal Taxes.

MARCH, 1802.

found voting with him to reduce the duty on coffee.

Mr. DENNIS said his object was not to dispense with the entire duty on bohea tea, sugar, salt, and other imported articles. But he had no other opportunity than that which he now embraced. For after it shall have been decided to abolish the whole internal taxes, gentlemen will tell us they cannot dispense with any of the duties upon imported articles. The only question at present is, whether we shall make a reduction of the duties on imported articles, or totally abolish the internal taxes.

Mr. LOWNDES said the subject was so important that he must beg the indulgence of the House while he submitted a few remarks. The motion goes to abolish the present duty on coffee, in order to lay a smaller one. A gentleman from Maryland, (Mr. S. SMITH,) informs us that he feels a conviction that the present duty is too high, and that it may introduce the practice of smuggling. But that gentleman must excuse my saying that his professions differ from his practice. He is now for voting away all revenue derived from the luxuries of life, from pleasurable carriages, from refined sugar, and other articles, and tells us after getting rid of these resources he will, by and by, vote for more moderate duties on imported articles. Good God! Is not this course putting it entirely out of his power to do so? The people of this country deserve some consideration. This is a new era. The people are reduced from a state of opulence to much distress by the cessation of European hostilities. The carrying trade, so lucrative to our merchants, is taken away. Labor has heretofore been high in our cities, from the activity of commerce. Now there is an alarming stagnation, and the most valuable portion of our citizens are without occupation; and yet taxes, predicated on the existence of the war, are to be continued on a peace. Gentlemen who have gotten power seem to have forgotten the people who gave it to them. By the stagnation of trade our farmers will be injured. Flour, which lately sold for thirteen dollars per barrel, now sells for six dollars. If the profits of the farmer be reduced ought not his expenses of living also to be reduced? What good can result from repealing the duties on stills, or pleasurable carriages, and on sales at auction? Is not the tax on stills a good one, and has it not been approved by experience, ever since it came into operation in the year 1790? Have any inconveniences been experienced? Have not, on the other hand, the distilleries increased to the enormous number of twenty-two thousand? Has not the revenue likewise increased? and are not these strong evidences of the propriety of the tax? Suppose it should restrain the immoderate use of spirituous liquors, is not the result beneficial to the morality of our citizens?

But the articles of tea and coffee are different in their nature—they are promotive of morality, and restrain the use of ardent spirits. The gentleman from New Jersey has informed us, that the lower class of citizens in his State do not in general consume tea and coffee. But, however it

may be in New Jersey, I will inform the gentleman that in Charleston the lower class of citizens—the very carmen—do consume these articles, which, after the fatigues of the day, are their evening solace.

The gentleman from New Jersey has told us, that the people of this country have never been oppressed by taxes. I am happy to hear gentlemen on that side of the House make this confession. I believe they never have been oppressed by our predecessors. I will not say they have never felt the burden of taxation, because I believe they have felt it. But they have considered the taxes laid necessary for the security of the Government.

This tax upon coffee appears to me to be unnecessary, impolitic, and oppressive. It was laid when we were subjected to the depredations of foreign nations, and menaced with hostility; and yet it is to be continued after the occasion for which it was created has ceased. The people will feel it. They will discriminate between the tax, and the price of the commodity, and they will understand from what quarter the tax proceeds.

There is another pernicious consequence that will result from the continuance of this high duty upon coffee. It will hold out a dangerous temptation to the merchants to smuggle. Coffee and sugar are articles of great value and small bulk. The day is not distant when the circumstances of the country, the great extent of the seacoast, and our numerous ports, combined with this temptation, will introduce the pernicious practice. I hope, for these reasons, the House will agree to reduce these taxes, and hold out to the country those enjoyments which have been heretofore possessed.

Mr. ELMER said, that as to those articles which are necessities, and those which are luxuries, gentlemen will differ. He thought it, however, extraordinary that it should be insisted that bohea tea and coffee are necessities of life, and carriages luxuries. He certainly considered pleasurable carriages as of this description; yet many carriages, and more than one-half of those in use in New Jersey were of the first necessity. He would feel very happy in reducing the duty upon tea and coffee, if our circumstances shall admit it. But though they may be extensively used, it by no means follows that it is good policy to encourage the consumption of them. He believed some of our own products would form a very good substitute for coffee. With regard both to tea and coffee, he knew that so far from being necessities of life they were consumed by the citizens generally in proportion to their wealth.

Mr. E. said he had not expressed the sentiment ascribed to him by the gentleman from South Carolina. He had neither said that the people had been, or had not been oppressed by taxes. He had said that tea and coffee were not necessities of life. As well might tobacco, which was in general use, be called a necessary of life.

Mr. E. concluded by observing that he should be pleased with a diminution of the duties upon tea and coffee; but that it must be evident this

MARCH, 1802.

Internal Taxes.

H. OF R.

was not the proper time to consider its expediency, as the bill then before the House respected exclusively the repeal of the internal taxes.

A member inquired where the word "coffee" was to be inserted.

Mr. NICHOLSON said the motion made had been to strike out the words "sales at auction," and insert "coffee." The House having determined not to strike out, there was of consequence no place wherein to insert.

Mr. GRISWOLD replied that the difficulty into which gentlemen were thrown, arose from their having reversed the decision of the Chair, but that the question on inserting "coffee" must be put.

Some additional conversation ensued, when Mr. HILL observed that he had voted against the decision of the Chair from an impression that it was wrong, but he was now satisfied it was correct; he, therefore, moved a reconsideration of the decision of the House.

Mr. DAVIS moved to adjourn.

Mr. SOUTHARD said he felt no embarrassment. In his opinion the decision not to strike out entirely superseded the motion to insert.

The question of adjournment was lost.

Mr. S. SMITH asked whether the question of reconsideration was a question of order, or whether it was one that admitted of debate?

The SPEAKER said he would consult the rule respecting questions of reconsideration.

Mr. BAYARD said, in order to allow time, he moved now to adjourn; carried—ayes 46, noes 38.

THURSDAY, March 18.

An engrossed bill to alter the time of holding the district court in the district of Maine was read the third time, and passed.

Mr. JOHN COTTON SMITH, from the committee, to whom was referred, on the twenty-ninth of January last, the petition of Alexander Roxborough, made a report thereon; which was read, and referred to the Committee of the whole House to whom was committed, on the sixteenth instant, a report of the Committee of Claims on the subject of Loan office and final settlement certificates.

The bill sent from the Senate, entitled "An act to empower John James Dufour and his associates to purchase certain lands," was read twice, and committed to a Committee of the Whole.

INTERNAL TAXES.

The House resumed the consideration of the bill for repealing the internal taxes.

When the motion of Mr. HILL to reconsider the decision of the House of yesterday, reversing the decision of the Chair on the point of order, was put, and the yeas and nays called, on motion of Mr. STANLEY, and lost—yeas 38, nays 42, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger,

7th Con.—33

William Jones, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, Joseph H. Nicholson, Joseph Pierce, Thomas Plater, Nathan Read, John C. Smith, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, William Dickson, Lucas Elmendorf, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, James Holland, George Jackson, Charles Johnson, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

Mr. RANDOLPH observed that in the repealing bill before the House, there was a deviation from the terms of the bill proposed to be repealed, in relation to the tax on carriages. In the last bill the terms were "carriages for the conveyance of persons"—in the bill before the House the expression was "pleasurable carriages." He moved therefore to strike out "pleasurable," and insert after "carriages" the words "for the conveyance of persons."

Mr. T. MORRIS called for a division of the question.

The question was then stated on striking out "pleasurable," and carried without a division.

Mr. GRISWOLD then moved to strike out "carriages."

Mr. G. said he hoped the House would agree to retain this tax, as it fell exclusively on the rich. It had been said by the gentleman from New Jersey, that it did not fall exclusively upon the rich in that State; but in all the other States it certainly did. It will be easy to collect it, without a train of supervisors and collectors. You may make it the duty of the owners of carriages to enter them with the collectors of customs, or deputy postmasters, and inflict a penalty on a default of payment. In this way the collection will not cost you more than four or five per cent.

This expense is much lower than that paid on imported articles, no part of which, in the collection, costs less than forty per cent. The importer pays five per cent. to the collector. This he charges upon the retailer. He also charges his profit upon the duties, as well as the first cost and expenses of importation; the retailer again charges his thirty-three or forty per cent.; and all these accumulated charges are paid by the consumer. If this be the case is it not best, if there be any reduction in our taxes, is it not demonstrable that we ought to repeal those which operate exclusively on the poor, and whose collection costs at least forty per cent., rather than those which are derived from the rich, and whose collection does not cost more than five per cent?

Mr. BACON observed, that he thought the argument of the honorable gentleman from Connecti-

H. OF R.

Internal Taxes.

MARCH, 1802.

cut not altogether correct. That, in his opinion, this particular species of tax, in New England, fell heavier, he believed two-fold heavier at least, on the clergy, in proportion to their wealth, than on any other description of men in the community; that the clergy in general, particularly in Massachusetts and Connecticut, were by no means opulent; that, as it was necessary for the accommodation of their families, they generally kept a horse and chaise; that the clergy were greatly revered in New England, and that so tender were the State laws in Massachusetts and Connecticut, that they were never permitted to affect the property of that venerable body of men by way of taxation; that it appeared rather extraordinary that the honorable gentleman from Connecticut should be so desirous, by a law of the United States, to subject our clergy to a tax so unequal in its operation, and which bore so hard upon them in particular, compared with the rest of the community.

Mr. SOUTHARD.—Under the existing law, which this motion proposes to continue so far as it respects the tax on carriages, in order to collect this tax it will be necessary to retain about four hundred and fifty officers, to pay whom the whole proceeds of the carriage tax will be inadequate. I believe the people have no idea of paying a direct tax to support officers for collecting a carriage tax. The gentleman says we may authorize the collectors or deputy postmasters to collect it. What! Shall the citizen be obliged to go fifty or a hundred miles to pay the tax? It will be a heavy tax indeed, if, in addition to it, the citizen is burdened with the expenses of a long journey. A large class of the carriages taxed are of small value. In the State of New Jersey five hundred and forty two are of this description, which are principally market-wagons, and not designed for pleasurable purposes—one hundred and fifteen are of another description, called windsor chairs, and are generally owned by people that are very poor. Add on these to the two dollars tax, the expense of going a great distance to make payment, and the fine for neglecting to do it, and you will perceive the extent of the burden.

This tax is also unequal in its operation on the States.—\$5,252, are paid by New Jersey; \$7,325, by Pennsylvania, and \$7,807, by New York. Thus it appears that the State of New Jersey pays almost as much as these large and wealthy States, and that the sums paid hold no proportion to the population of the States. The same inequality will be found in other States.

Since gentlemen have taken the poor under their protection, I hope they will treat them with especial care; and that from regard to them they will leave this tax to the States, who instead of oppressing their poor with a poll and house tax, may avail themselves of this source of revenue. If collected by the States, the collection will be liberated from a heavy expense, as it is well known that the expense of collecting taxes in the States is very small compared with that of the Union.

Mr. HUGER.—Gentlemen may well be in favor of taking off this tax, who know that after it is

taken off, we are to bear the burden of the day. The gentleman from New Jersey says carriages are necessities of life in his State. This puts me in mind of the boy who pelted stones at the frog, and who, when called upon to say why he did so cruel a thing, said it is a very pleasant thing to me. No doubt it is a very pleasant thing to the gentleman from New Jersey to get rid of this tax. But it is impossible to imagine a tax more easy of collection or less oppressive.

Contrast the operation of the internal and external duties upon the different States. Of the impost, Virginia pays about eight hundred thousand dollars, while South Carolina, a comparatively small State, pays about eight hundred and four thousand dollars, which is four thousand dollars more than the great State of Virginia. Of the internal duties, Virginia pays one hundred and thirty-four thousand dollars, while South Carolina pays only twenty-three thousand dollars; and if these taxes are repealed, South Carolina is to console herself for being released from the payment of twenty-three thousand dollars, while Virginia is released from the payment of one hundred and thirty-four thousand dollars.

The observation of the gentleman from Massachusetts, respecting the clergy, is extremely curious. I hope I respect the clergy as much as that gentleman, or any member on the floor. However the clergy may be treated in Massachusetts, in South Carolina we support and pay them well, and we treat them as citizens. The very argument of the gentleman, that in his State they are exempt from all State taxes, is an argument for taxing them by the United States.

The arguments of gentlemen are very strange. They say the repeal of these taxes has been talked of all over the continent, and because talked of, and expected, they must be repealed. What does this mean other than this? If you elect me, I will get rid of these taxes; and gentlemen now gravely get up, and assign this as a reason for their votes.

The next argument is not less curious. We are told that though a particular branch of the internal duties does not fall heavily, yet that if one be repealed, we must repeal the whole, from the expense of collection. But if one of these taxes be wrong, why not repeal it, and let the others stand? I say with the gentleman from Virginia, that if we cannot collect the tax on whiskey without a system of espionage odious to a free people, I have no objection to doing it away.

When, too, we call upon gentlemen for particular information to enable us to determine the comparative merits of internal and external taxes, we are answered by the exhibition of a profound and philosophic style of silence. I conceive that when the time comes for a repeal of certain taxes, we ought to have statements in black and white; we ought to have chapter and verse; and I have always thought it best ever to show our ways before we do away our means.

Though I shall vote against giving up the carriage tax, and other branches of the internal revenue, yet if these amendments do not succeed, I

MARCH, 1802.

Internal Taxes.

H. OF R.

shall, notwithstanding, vote for the bill. For though I have strong doubts that the United States cannot do without these taxes, I am one of the minority; I stand not on the vantage ground. Having therefore strove ineffectually to relieve my constituents from the burden that is likely to be thrown upon them, I will vote for the bill, though I think gentlemen ought not to have attempted this thing till the last moment of the session, until the savings which are talked of had clearly been exhibited.

Have these savings appeared? No! According to the report of the Secretary of the Treasury not a cent can be spared. The Secretary of the Navy stated that his Department required more than a million; and yet in the report of the Committee of Ways and Means this sum is pared down, and two hundred thousand dollars taken from it, without assigning any reason for the reduction. It is a fact, then, that these taxes are to be demolished, and the funds of the Navy and Treasury Departments to be cut down. When then, the resources are not over the demands for the year, and gentlemen are inflexibly bent on this act, I must say that it is my opinion it is predicated on popularity. I do not say the present Administration are for destroying public credit, the army, and navy. I hope in God it is not so. But gentlemen will recollect that they have been charged with these designs. I will ask if it would not be more prudent first to make savings, and at the next session, if admissible, to take off these taxes? But gentlemen are scarcely six months in the Government, when they pursue measures, not to pay the public debt, but to destroy the means of paying it. I speak the more boldly on this point, as I have no interest in the funds, and am a mere planter.

The expense of collecting these taxes, is insisted on. But it has been shown that many, if not all the present offices may be done away, and the expense reduced to a level with the expense of collecting the imposts; and thus every reason for the repeal is done away. Do gentlemen, casting their eyes over the world, see the defenceless state of our trade? Do they see a large army in St. Domingo? Do they regard the report that we are about to change our neighbors, and have a great nation along side of us? Do they not perceive that the peace in Europe is barely an armed neutrality? And yet do they imagine the golden age has come; and that this is the moment to alter our wary plan, to reduce our resources, and to leave everything at sixes and sevens?

I have heard no complaint of any of these taxes, except those on stills. Let then the last be repealed or modified, and retain the rest. They yield about two hundred and forty thousand dollars. Retain these, and take off the eight cents upon salt, which produce two hundred and fourteen thousand dollars; leaving twenty-six thousand dollars for the collection. I will ask if the great bulk of the people will not be benefited by this change?

Had not things taken their present course, I should not have called upon the gentleman from

Virginia, (Mr. RANDOLPH,) to support me in my present proposition. But I recollect that at the time when the present duty on salt was laid, that gentlemen inveighed so eloquently against the measure, that he almost persuaded me to vote against it. Why then this change? Do not the people feel it as heavily now as they did then?

The present state of trade ought to influence our decision on this subject. Our merchants are in a serious situation. I know, as a planter, that my produce stands unsold, even at reduced prices, owing to the embarrassments of our merchants. The want of circulating coin will prevent the merchants from importing, and us from buying goods. It is possible that our commerce may not, but it is probable that it will decline. It ought to be recollected, that for some years past we have enjoyed the advantages of neutrality amidst belligerent nations. Hence our tonnage had greatly increased. It must now decline, and I cannot conceive that our external duties will be commensurate to the demands of the Government for the next year. You will observe that the Secretary of the Treasury calculates for a number of years; whereas the Committee of Ways and Means calculate only for this year. Though, therefore, there may be resource enough for the present year, there will be a defalcation the next year, from the increasing instalments of foreign debt.

I have made these remarks, because I think they clearly apply to the proposition before us; and because I think gentlemen should show us clearly and unequivocally that this measure is proper, before we are called upon to support it. I make this opposition, not because I have any objection to cutting down the expenses of the Government. I have no interest against their retrenchment. I have never received, or expect to receive anything from the Government.

I have also made these objections to account to my constituents for my voting against these articles distinctly, in order to effect a diminution of external duties, and relieve others from the unequal burden imposed upon them. But still, as I before observed, if these motions are all rejected, I shall finally vote for the passage of the bill.

Mr. VARNUM—It has been stated that the tax on carriages falls altogether on the opulent part of the community. But, as this observation applies to the State which I have the honor in part to represent on this floor, the statement is not founded in fact. In that State there are four thousand, two hundred and sixty-one chaises and other two wheel carriages, on which are paid annually more than \$12,000 tax. The whole tax on carriages of all kinds in that State, is \$14,096. The chaises and other two wheel carriages in that State, are by no means exclusively owned by the opulent; yet that description of carriages pays the principal part of the tax. There are, in that State, nearly six hundred clergymen, the principal part of whom are owners of chaises; and such are their avocations that they cannot conveniently dispense with the use of them. But this class of citizens, although very justly held in high estimation, are very far from being in afflu-

ent circumstances; many other persons who are owners of that description of carriages, have been in the habit of attending public worship at least once a week, since they have been on the stage of action; which, from their local situation, and the infirmities of age, it would be extremely difficult for them to continue to do, if they should be deprived of that mode of conveyance; many of this description of citizens are also far from being in affluent circumstances. It is a fact, that the tax is a very unequal one, as it relates to the value of the property on which it is laid, and a burdensome one to many who pay it, especially to the clergy and the description last mentioned.

But, sir, there is another reason which operates in my mind against the motion, viz: the extreme inequality of the carriage tax as it applies to the individual States. The whole tax amounts to \$77,871. Massachusetts pays \$14,096 of that sum, whereas she ought to pay but \$10,284, according to the Constitutional mode of apportioning direct taxes; that State therefore, is compelled, by this mode of taxation, to pay at least one quarter-part more than her just proportion. Is that the case with the State of Connecticut, or South Carolina? No sir, Connecticut pays considerably less than her proportion when compared with all the States; and not two-thirds of her proportion when compared with Massachusetts. She pays \$4,564, and her proportion compared with Massachusetts would be \$7,048. South Carolina pays \$4,329; her proportion with Massachusetts would be \$6,041. If it is extremely difficult for gentlemen on this floor, as well as elsewhere; to divest themselves of self, and the pecuniary interests of their constituents, will not this view of the subject, in some measure, account for the pertinacity of the gentleman last up from Connecticut, and the last gentleman up from South Carolina, on the question before you? But if these gentlemen are for continuing the tax on carriages, because it operates favorably to their constituents, it is to be hoped that the candor of the gentlemen will permit the members from Massachusetts to vote in favor of the repeal of a tax so apparently unequal and unjust as it relates to that State. There is as great a disparity in the proportion of this tax paid by Massachusetts, when compared with Virginia, North Carolina, Kentucky, and Tennessee, as when compared with the other States which I have mentioned; but much to the honor of the gentlemen from those States, they are willing to repeal the tax, and equalize the public burden.

Mr. Speaker, I may be permitted to make one remark, relative to the repeal of the internal taxes contemplated by the bill under consideration. In the first place, it is an obvious fact, that they operate extremely unequal among the several States. Massachusetts alone has stood chargeable with nearly one-fifth part of them when taken all together, from their first introduction up to this time. It will not, therefore, be thought improper in the members from that State, to solicit the repeal of so unequal, and so unjust a burden. But, sir, the high and satisfactory motive for a repeal, is

derived from a firm belief that they are no longer necessary. The retrenchments of the present session will be paramount to their product, and the remaining revenue will be amply sufficient to secure the public credit, and meet the exigencies of Government. It is therefore to be hoped, that the motion for striking out carriages will be rejected, and that the bill will be passed.

Mr. RANDOLPH.—I shall give a different reason from any yet assigned, for voting against the motion to strike out carriages. Sensible of the fatigue of the House, I shall be as brief as possible in the expression of my sentiments, as well from a respect to their feelings, as from a regard to my own.

My reason for repealing this tax, is not because I think there ought not to be a carriage tax; nor because I do not consider that description of tax as fair and proper; but because I view it as a part of a system of taxation which is unequal and oppressive.

I am glad to hear that the importer receives double the sum collected. I will not deny, though I might, this extraordinary statement. I will only make one use of it, in which I am fairly warranted; and that is, that this imposition, which we have been so often told is paid by the merchants, and falls with such peculiar weight upon them, so far from being a tax levied on them, and so far from oppressing them, is, indeed, collected by them, advanced by them, but for which they receive an ample return from the labor of the community. As, therefore, we are told that the merchants do not receive less than a hundred per cent. on all sums advanced in anticipation of the revenue, it is to be hoped that we shall hear no more clamor about taxing one class of citizens to the exclusion of all the rest. The fact is, that the external duties are not an exclusive tax on that class of citizens; for there is no class, but that of the great mass of the people, that can afford to pay the enormous sums levied on imposts.

We are told the additional imposts upon salt, coffee, brown sugar, &c., were predicated upon war measures. The answer is, let us retain these taxes to pay war loans, for which the war men of this country have made no provision.

If this tax on carriages be taken off, I have no idea that carriages will remain entirely exempt from taxation. The States will tax them, which, at present, they are, in many cases, unable to do, without rendering the tax a prohibition of the use of the article taxed.

A gentleman has told the House, on a former occasion, what is the interest of himself and his friends on the subject of taxation. He said, we have no interest to insist on the continuance of taxes, and asked, are we to be reimbursed what we pay? Are we not, on the contrary, to be ejected from all participation in the loaves and fishes? If gentlemen have no interest in these taxes, why persist in their system? I will answer for the gentlemen, what interest they have to continue the system, such as it was when they went out of power. A system of patronage has, with them, been a favorite measure; and they have the

MARCH, 1802.

Internal Taxes.

H. OF R.

same interest to continue this part, as the other parts of their system; because, if that party, as it is termed, should again come into power, as soon as an occasion offers, the same system will be brought again into operation.

We are told that the external taxes fall exclusively upon the consuming States. I am glad to hear it. It follows, then, that the manufacturing States pay the least portion of them. All know, it requires no superior intelligence to comprehend it, that every dollar laid on foreign productions operates as a tax on the consumer, and as a bounty upon our own productions. It must, then, be acknowledged that there is but little difference between the standing of the Southern and the other States. And when it is said that they pay a lesser proportion of the internal duties than the other parts of the Union, I ask if that is not proper; inasmuch as they pay more than their proportion of the external duties?

When this Government was first thought of, what was the contemplation of the nation as to taxes? Was it not conceived that Congress would be confined to an *ad valorem* duty upon imported articles? Instead of that, the Government was vested with ample powers. In addition to the exclusive power over duties on imports, the whole field of excise, direct taxation, &c., was opened to them. But was it not understood that these latter sources were only to be used on extraordinary emergencies?

I will ask, if the cultivators of tobacco, cotton, and other valuable productions, do not consume imported articles in a greater proportion, than is consumed in States without staples. You then tax those who are not only able, but willing to pay. And let me say, there is no species of taxation so oppressive, whatever its amount, as that which compels the individual taxed to retrench his personal freedom, that calls upon him to pay a specific sum, and compels him to pay, no matter what his ability is. Thus, the contribution of the consumer of imported articles depends upon his ability and disposition to pay, and if he pays more than his proportion, he can censure no one but himself. Observe the difference between the situation of this man, who pays his tax voluntarily, and that of him who is called upon to pay for his still, or for a stamped instrument of paper, predicated on an existing debt, but from which not a farthing may accrue to either party.

Besides, there is one great distinction between the effects of reducing the external taxes, and abolishing the internal revenues. If you reduce the duties on salt, tea, sugar, &c., you do not abolish a single office. But, by taking off the internal duties, you abolish a host of offices. Look, too, at the facility with which the duties on imposts are collected. Eleven millions are collected in fifty-four towns, by a few collectors, surveyors, and naval officers. Compare, with this view, the large number of officers required to collect the small sum derived from the internal revenues; and yet, the tax upon imposts is unequal, because Virginia only imports six millions, while South Carolina imports fourteen millions. I had not

supposed that a gentleman whom I have known from infancy, and for whom I have invariably entertained the greatest respect, would, knowingly, have attempted to mislead the House. No doubt, the gentleman thought his statement correct. But I will ask, what respect ought to be paid to the facts of a gentleman, or to arguments deduced from those facts, who makes the total amount of imports and exports introduced into, or taken out of the respective States, the same with the amount of articles consumed or raised in those States? Do we not know, for instance, that Charleston is the great market, not only for South Carolina, but also for other adjoining States; that it is the importing and exporting town of an extensive district of the Union; and is not the case precisely the same in other parts of the Union? I am the more authorized to make this appeal, from the gentleman having told us that our tonnage is about to be reduced; that our merchants are about selling their vessels to foreigners; and that, therefore, we are about to lose a valuable branch of our revenue. But let us attend to the relative amount of domestic tonnage and foreign tonnage. Let us recollect, too, that our own tonnage is precisely in the inverse ratio of our revenue; and that, in proportion as we have substituted American in the room of European shipping, has our revenue derived from tonnage diminished.

The gentleman says, he wishes to retain these taxes, because the Western States pay so small a proportion of the duties on imported articles. But the fact is, that the States of Kentucky and Tennessee pay their full proportion. It is true that they do not themselves import, but they consume goods imported into Charleston, Norfolk, Baltimore, &c., which goods find their way to those States.

The gentleman condemns me for not now voting for a repeal of the tax on salt, inasmuch as on a former occasion I was strenuous against the imposition of it. But I will ask that gentleman whether, when I was so strenuous against the imposition of that tax, either he or his friends offered to commute the whole internal taxes for it? I am ready whenever circumstances shall admit, to diminish that duty, but not with the views of gentlemen, who are not so much in favor of reducing the public burdens, as for throwing an odium upon other measures equally necessary, and for casting a shade of unpopularity upon this act. Why do I say so? Because, when power was in their hands, they were not for reducing them an iota. On the contrary, their system was to get all they could, and keep all they got. They would not commute even the Sedition law for any duty or tax. As it had been well said by a gentleman from Kentucky, now power has parted from gentlemen, they are willing to reduce the taxes, to take them entirely out of our hands, and instead of letting us apply them, they say let us do it, and let us use your power to do that which is disagreeable to us, in the way that is most agreeable to you. This, and nothing more nor less, is the amount of the remarks of gentlemen.

After having experienced the benefits of the

H. OF R.

Internal Taxes.

MARCH, 1802.

system of these gentlemen, we are now told they have made a great discovery in the mode of reducing the public expenses. Pity it was not made while those gentlemen were in power. So long as they enjoyed the power, the idea of reducing the public burdens never entered into their minds; at any rate we heard nothing of it if it did. But so soon as the nation had dismissed them from power, so soon as any disposition to that effect became inefficient, we hear the gentlemen loudly contending for a reduction.

When gentlemen say they are not anxious for extending a system of Executive patronage, we are willing to give them credit for what they say. But let us see what credit we are entitled to when we say the same thing. We show, on this occasion, as I trust we shall on all occasions, that we do not take up their principles with their power; that, on the contrary, we advance the same principles now, when in possession of power, that we did, when we had scarcely any prospect of getting into power.

Of all the articles of internal revenue, if any were retained, no doubt that upon stamps should be retained, as it is at once the most productive, and the least expensive in collection; and yet, what do gentlemen propose? To retain the tax upon carriages, that only yields the inconsiderable sum of eighty thousand dollars, and give up that on stamps, which produces two hundred and forty thousand dollars. Why? because the latter falls on the merchants; and yet gentlemen say, in the same breath, the external duties fall on the consumer, and not on the merchant.

For my part, I am not to be deterred by any attempt to render this measure unpopular, from pursuing steadily that system which is congenial to the spirit of the Constitution, viz: to throw back the internal taxes into the hands of the States, only to be used by this Government on a national emergency. When this Government was established, we were informed that these taxes were never to be laid but on such emergency. Yet the Government had not been in operation more than two years, when they were seized, to rear that system of patronage, which, from the commencement of the Government, has been so favorite a measure. It is not my purpose here to trace that system of patronage through its various modifications, which has been more happily done by my colleague on a late occasion. But it is my object to restore the Constitution to its healthful state, by doing away these taxes; of which should we retain a part, however small, we might, on a mere change of men, see it soon ramified to the greatest extent.

Gentlemen tell us no saving has been shown to be made; but I think it has been clearly shown, that a saving has already been made more than commensurate to the whole amount of these internal taxes. In addition to this sum, is the difference between the amount received and that which is payable, which is more than one hundred thousand dollars, for which the Committee of Ways and Means have made no allowance. The fact will show the disposition of the com-

mittee, not to insist upon items of small amount, though in the aggregate those items amount to nearly two hundred thousand dollars, which is one-fifth of the whole sum of these taxes.

We are told this act is unwise, as the state of things abroad is perilous, and that we ought not to part with the sum of \$650,000, because the revenue from imports may fail. Do gentlemen mean to say that, in such event, we can rely on the sum of \$650,000, for a defalcation in a revenue of eleven millions? If this argument means anything, it would dictate the organization of the system of internal taxation commensurate to the meeting of any defalcation that may accrue. Let us give them all they want. That defalcation may be thirty, fifty, or one hundred per cent.; and it follows that we ought to raise from these taxes five or ten millions of dollars. It is from the fact that this source is unequal to the supply of any great defalcation, that we are for giving it up.

I am sensible of having detained the Committee longer than I myself had intended, or they may have wished; but, from the situation in which I was placed as a member of the Committee of Ways and Means, I felt it my duty to trouble them even at this late hour. Before, however, I sit down, I must say that the committee have shown that a saving at least equal to, and probably a much greater sum than the amount of the internal revenues will be made. Estimating the contemplated reductions at the lowest rate, there will be saved in the appropriations for the army \$400,000; for the navy \$200,000—these will cover the internal taxes. The committee have said nothing about the abolition of the Mint, which will save \$30,000; or of the Judiciary; nor have they brought into view the large amount of custom-house bonds not yet collected.

But we are told that this repeal is to take place at the expense of the navy, and that the navy is an institution to which the people are attached. The people certainly have a right to decide, whether they will vest large sums in the building of seventy-fours, or small sums, that they may pay their debts.

The estimates on which the gentleman from South Carolina relies, are not estimates made by the Secretary of the Navy for the present year, but for the last year, and the gentleman will find that the expenses of the present year, supposing that we keep up the squadron in the Mediterranean, will amount to a sum less, by \$500,000, than the expenses of the last year. Is the gentleman prepared to show the statement of the Secretary of the Treasury to be incorrect? Is he prepared to say, that we cannot keep up the amount for what he estimates it at? We have heretofore heard much of confidence in Executive officers. I am not one of those who are for bestowing confidence, where it is not merited; but I have no hesitation to say, I will, until gentlemen show strong reasons for the contrary, give confidence to officers, whose character and whose offices depend on the fairness of their statements.

Mr. HUGER explained.—He said, he had not stated that South Carolina consumed the whole

MARCH, 1802.

Internal Taxes.

H. OF R.

that she imported; he knew the contrary. But he contended that South Carolina, and other States on the seaboard, paid a larger share of the duties on imported articles than the interior parts of the Union. Neither did he say, that the reduction in our tonnage would have any very great effect. He was aware of the difference between foreign and domestic tonnage. Yet, certainly, if the effect of a peace was the losing a large portion of our carrying trade, the amount of tonnage must sink.

[A motion was made to adjourn, and lost.]

Mr. GRISWOLD.—The question is, whether we shall strike out carriages. On this limited motion, I did not expect to have heard gentlemen go into a full examination of the merits of the whole internal revenue. Having, however, indulged themselves in the inquiry, it seems necessary to follow them, even though my remarks should fail in their application to the carriage tax. It is not true, as stated by the gentleman from Massachusetts, (Mr. BACON,) that the clergy of New England are paupers; they are not paupers.

Mr. BACON said, he had stated no such thing.

Mr. GRISWOLD.—They are not paupers, sir. They are able and willing to pay, with cheerfulness, their portion of the public burdens. It is not true that Connecticut does not pay her proportion of the carriage tax. The document shows that she does pay her proportion of it, though that proportion is not so high as that paid by Massachusetts. Gentlemen have made it needful to state the situation of the clergy of New England, in order to remove the imputation against that order of men, and to state the proportion of the tax paid by us to prove that we are not particularly interested in the continuance of this tax.

We wish to retain it, because we deem it necessary, because we deem it a reasonable tax; and because it is one that is less expensive in collection than other taxes.

We are persuaded that, if gentlemen will examine the documents on the table, they will find that though vast credit is due to the last Administration for the skill manifested by them in the establishment of the revenue; yet they will see that there is no certainty of its amount for the eight coming years being so productive as they seem to suppose. If they refer to the document, they will find that for the three successive years of 1790, 1791, and 1792, the average product of imports, calculated on the present rate of duties, was \$6,153,000; they will also find that, for the six succeeding years, the average product was \$8,350,000. Now, I think it is not safe to estimate the receipts for the eight coming years higher than those of these six years. It is to be observed, that these six years included a period of war, which extended the value of our exports, rendered the consumer better able to pay, from the high price received for the productions of his labor; and increased the consumption of luxuries more than in time of peace. It will also be evident that a variety of items which have gone to make up the aggregate of the revenue, will, in time of peace, fail. There are \$86,000 estimated on drawbacks, which arose from duties paid on imported articles,

afterwards exported from the United States, and which will cease the moment the carrying trade ceases. Will any gentlemen say, that in time of peace we shall continue to import articles for the consumption of Europe, the Spanish colonies, &c. This item, from its nature, is calculated to cease at the end of the war. It must cease.

Some duties must be reduced. Of wines, the average product of the duties for the years 1790, 1791, and 1792, was \$317,000; for the six succeeding years, it was \$714,000. Do gentlemen think this amount will be kept up? During war, your citizens are able to purchase. In peace the ability must decline.

The duty on sugar, in three years, has risen from \$560,000 to \$902,000. The duty on coffee has risen almost in the same proportion; and if it is not reduced, you will lose by its being smuggled; the temptation will be too strong to be resisted.

You cannot, therefore, calculate upon more than the average of the above six years. Indeed, you cannot with safety calculate so high. The Secretary of the Treasury has grounded his calculations on the idea that the consumption of foreign articles will increase with our population. But I totally disagree with him. I will ask whether you will consume more than you can pay for? I will ask how you will be enabled to pay for more now, in a time of peace, than you were enabled to pay for formerly? Are the European markets, or those of the West Indies increased? If not, it will follow that the consumers of your produce are not increased, though your productions are increased. And this state of things, instead of increasing the consumption of foreign goods, will only tend to increase your manufactures.

Other circumstances, too, have arisen, that have enabled us for some years past to pay for more goods than we can expect to be able to pay for hereafter; viz: the funding the national debt, and the selling a large amount of stock abroad. I hope we shall have no more national debts to fund.

If it is not safe to rely upon a higher amount of duties than the average receipts of the last six years, then you cannot rely upon a higher annual receipt, for duties on foreign articles, than \$8,350,000. But suppose you derive \$8,500,000 from this source. In addition to this fund, the Secretary of the Treasury calculates upon receiving annually \$400,000 for the sale of lands. I am inclined to believe the amount will not be so large; but set it down at that. The postage of letters will yield \$50,000, and the dividends upon bank stock \$71,000. And here you have the whole amount of your revenue, with the exception of a trifling sum for patents, fines, &c. The whole in the aggregate amounts to \$9,071,000.

I will now inquire into the expenses for the eight coming years. According to the Secretary of the Treasury, we are to pay \$7,300,000 on account of the debt. But I will not take his calculation. I will state it at \$7,000,000, which we must pay; the civil list \$780,000—it will be understood that this is only what is absolutely necessary; the foreign intercourse, &c., estimated

H. OF R.

Internal Taxes.

MARCH, 1802.

at \$200,000; the Military Establishment \$1,420,000, as estimated at the opening of Congress, and which is the estimate of the ensuing, and not of the past year, as stated by the honorable member from Virginia.

Mr. RANDOLPH said he did not state it to be the old estimate, but an estimate formed on the old basis.

Mr. GRISWOLD—I took it so. It is not safe to put the expenses of the Military Establishment, for the eight coming years, lower than this estimate. Gentlemen ought to consider the situation in which we are placed. They ought to consider our neighbors on the frontier, and those who are likely to be our neighbors. They ought to consider the accidents to which all nations are exposed. They ought to consider the necessity of sending a strong garrison to the posts on the Mississippi; and when they consider all the circumstances, they will agree with me, that it is not safe to trust the defence of the country to arrangements that will involve a smaller expense.

At the beginning of the session, the expense of the navy was estimated at \$1,100,000 dollars; we since find it reduced to \$900,000. On this estimate I have two remarks to make. I ask whether gentlemen are content to take this estimate for the eight coming years. How is it to be made out? By striking off \$150,000 appropriated to progressing in the building of the seventy-fours, and \$50,000 for making navy yards. What is meant by this? May not gentlemen as well lay down the navy at once? You have not at present a single dock where a large vessel can be commodiously repaired; and to make such a dock will cost at least \$50,000. It is easy to make this reduction on paper; but we may as well burn our ships of war, or give them as a present to our sister republic. I trust, however, the country is prepared to give up the protection of commerce; and if not prepared, we must devote annually \$1,100,000; which indeed, is short of what will be required.

Taking the old estimates, which are the only correct ones, Government must expend annually \$10,500,000. But make a reduction for the Military and Naval Establishments of \$500,000, which the necessary measures of the Government will not warrant—and the annual expenditure will be \$10,000,000; compare with this, your revenue, which only amounts to \$9,071,000.

And in this estimate, I have made no allowance for that infinite variety of contingent events that under every Government are constantly arising. I ask, then, if it is safe, or proper, to give up the carriage tax, and all the other internal taxes, when they will probably be wanted for the expenses of the Government?

I am perfectly aware that our finances are in such a state, owing to the great skill with which they were managed under the old Administration, that we have now three millions of surplus revenue in our Treasury; and that gentlemen, by applying this sum to the wants of the two or three coming years, may meet the expenses of the Government, and perhaps go on till another Pres-

idential election. But I trust we shall not act upon this narrow system. I trust we shall not look forward only to another Presidential election. But that taking into our view the eight ensuing years, at the expiration of which time, in consequence of the reduction of the debt which will then have been accomplished, a large sum can be dispensed with, we will wait till that period arrives, before we dispense with these branches of revenue, or any other.

Believing it unsafe to abandon any of these taxes, I shall vote against repealing all of them. I have, of consequence, no idea of giving up the tax either upon stamps or stills. I believe all to be necessary; as necessary for the support of public credit, as for the honor and safety of the nation.

We have no pecuniary interest in retaining these taxes. We share not the loaves and fishes; but we are deeply interested in the support of public credit, in the safety and honor of the nation; and let money go where it may, I will always vote for money enough to support public credit, and to maintain the honor and safety of the nation.

I believe that, in this project, more is intended than is expressed. I know, whenever a deficiency shall occur, where it will fall. I know that it will fall on our Naval Establishment. Look back to the sentiments and conduct of those who once held seats on this floor, and who now hold high offices under the Executive, and show me when they voted a cent for a Navy. Did they not invariably say, let commerce take care of itself? Yes, I have heard these declarations, and they account for these measures to starve the Navy. It is, therefore, I feel alarmed, knowing full well where the deficiency is to fall.

But it is said, the collection of the internal taxes is attended with great expense, and, therefore, they ought to be given up; that they increase Executive patronage, and, therefore ought to be surrendered. I deny that their collection costs more than that of duties on imports. It is stated by the Treasury officers, that the expense on imports is only five per centum. But how often have you been told that your merchants are only your collectors. Gentlemen have never heard me say that all the duties fall on the merchant. I know the contrary; and I know that, to protect the fair trader from injury, all you have to do is to make them so high as to produce smuggling, or so prompt in their payment as to prevent the merchant from collecting them from the consumer before he pays them into your Treasury. But the merchant sells to the retailer, whom he charges twenty or twenty-five per cent. on the duties paid by him. Before the articles sold get into the hands of the retailer, they come charged with an advance of twenty-five per cent. The retailer sells to the consumer with his thirty-three per cent. added. I did not say they stood charged with one hundred per cent., but with forty per cent. at least. All those who make these charges are collectors; so that the fact is, that instead of costing five per cent., as asserted, they cost to the

MARCH, 1802.

Internal Taxes.

H. OF R.

man who pays the tax—the consumer—more than forty per cent.

Let us in this view of comparative expense, turn to the other branch of the subject :

1. As to carriages.

The Secretary of the Treasury informed us, at the beginning of the session, that the internal revenues, taken together, cost in collection nineteen per cent. Now that officer acknowledges that they do not cost more than fifteen per cent. When an officer states one thing to day, and another thing to-morrow, I submit whether it is not better to make our own calculations. It is easy to prove that, in Massachusetts, the collection of the internal taxes does not exceed eight per cent., and it may be made equally low elsewhere. Therefore you may reduce this sum within ten per cent. Indeed, if you carry these taxes as far as you ought to do, to meet and equalize the duties on imported goods, you may bring the collection down to five per cent. Carry the duty on distilled spirits as high as on imported spirits, and my life for it, the expense will not be greater.

But, from another view, it will appear that the expense paid by the consumers of the objects of internal revenue, is not so high as on imported articles. For instance, distilled spirits are either retailed by the distiller, or sold directly to the retailers, and the distiller charges ordinarily no advance upon the tax, but gets his profit by being paid for the labor of distillation; this makes a difference of twenty per cent. In other articles, in licenses to retailers, there are no additional charges, no twenty per cent. Sales at auction are in the same situation; with respect to carriages, there is a still greater difference. The consumer pays nothing but the tax, without paying any commission or profit. Stamps are precisely so situated in most parts of the country.

The calculation, therefore, is fallacious, that makes the expense of collecting the internal revenue greater than that on imported articles; as, with regard to the latter, the consumer, in paying your duties, not only pays the collection, but also pays the merchant and retailer. So that these internal taxes are collected with the least expense of any. For what matters it to the consumer, whether he pays twenty per cent. to the merchant, or to the retailer, or to your officer? He actually pays it in either case.

Now, this being clear, and also that the taxes may be so modified as to be collected still lower, particularly that on carriages, (which may be collected by the deputy postmaster, who may receive the tax of persons living at a distance through the mail,) I ask, why give up the internal taxes in preference to those on imported articles? The gentleman from Virginia (Mr. RANDOLPH) tells us that the system of internal taxes is repugnant to the theory of a free government; that it requires a host of officers to collect them. But what is the danger from this source? Is it not well known that the tax gatherer is always odious, and that instead of having influence to subvert the Government, he ceases, as soon as he becomes an officer, to have that influence he

would otherwise have possessed? The officers, too, are very few—only one supervisor and a few collectors in each State. The gentleman must think very contemptuously of the people, to suppose that they can be corrupted by a few officers, with inconsiderable salaries. For these reasons, I consider the objection an argument against everything; as applicable to the Army, the Navy, and every other important object that can be named. It is an objection which may do to talk about, but which has no solidity in it.

I have only one further observation to make; and that is, that if we can part with any taxes, though my opinion is, that if we sincerely mean to support the credit of the Government we cannot part with any, but if we can, we ought to give up the tax on some imported articles. Coffee is taxed five cents a pound; the present price, including the impost, is not more than twenty cents; the duty is more than fifty per cent. on the cost abroad. This enormous duty is a great temptation to smuggling. It can be easily done. Let gentlemen look to the seacoast. The temptation to gain fifty per cent. is immense; and I am apprehensive the practice may be gone into, unless you lessen the inducement; and in that event your revenue is gone; for the payment of it depends upon the honor of your merchants. Such is your seacoast, that the vigilance of a thousand officers could not resist the practice, if the disposition were not wanting. If this duty on coffee shall produce smuggling in the merchant who imports it, his neighbor, who imports sugar, will say, my neighbor is growing rich by this practice; I have the same right with him; and the practice will catch like wild-fire. We ought, therefore, to put these excessive duties down.

Besides, as to sugar, that, in my opinion, is a necessary of life. The duty is fifty per cent. on its first cost. It must, therefore, be oppressive; and if we can dispense with any of the impositions, it ought to be with those which fall upon the necessaries of life, which are consumed by the poor.

For these reasons I am for retaining the carriage tax, for retaining all the internal taxes, and for modifying and improving them. I believe that in this way the expense of the collection may be greatly lessened, and such a modification of the taxes take place as shall produce an equal pressure of the public burdens upon the whole community.

Mr. BACON said he should reply to the honorable gentleman from Connecticut only by declaring in so many words, that his (Mr. G's.) answer to his (Mr. B's) observations, was predicated solely on his own assertion, as a fact, and on the repetition of the same assertion, of what was totally void of truth; and that, for a reason sufficiently obvious, he had refused to give him an opportunity, in its proper place, to correct the error.

An adjournment was moved, and lost.

The question was then taken by yeas and nays, on striking out carriages, and lost—yeas 25, nays 48, as follows:

YEAS—Manasseh Cutler, Samuel W. Dana, John

H. OF R.

Internal Taxes.

MARCH, 1802.

Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Ebenezer Mattoon, Thomas Morris, Thomas Plater, Nathan Read, John C. Smith, John Smith, of Virginia, John Stanley, John Stratton, Samuel Tenney, David Thomas, Thomas Tillinghast, John P. Van Ness, Killian K. Van Rensselaer, and Peleg Wadsworth.

NATS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmen-dorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

Mr. RANDOLPH moved to insert in the room of "pleasurable carriages"—"carriages for the conveyance of persons," the terms of the law contemplated to be repealed. Carried without a division.

Mr. DENNIS moved to strike out "refined," for the purpose of inserting "brown" sugar.

He said it had been his purpose substantially to offer this amendment before. He had frequently made the attempt, but had as frequently been foreclosed by the embarrassing motions of his opponents, and their rules respecting order.

Mr. RANDOLPH said he believed there were no internal duties imposed on brown sugar. Such an amendment will make the bill perfect nonsense.

Mr. DANA suggested to the gentleman from Maryland a modification of his motion, so as to introduce the words, "imported brown sugar" between "carriages" and "stamped vellum," in the sixth line.

Mr. S. SMITH wished to know whether it was consistent with the order of the House, or with the decency which one gentleman owes to another, to ascribe to those who had thought it their duty to make certain motions, motives and intentions different from those they had avowed? He said he was unwilling to enter into altercation with his colleague, or with anybody; but if gentlemen do not restrain themselves in their reflections on us, they will compel us to be as indelicate as themselves, and this House will be converted into a bear-garden.

Mr. SMILIE said, he had not the least disposition to prevent any motion being made that was designed to make an impression upon the public mind. But he was certain he did not transgress decency in saying that he had never seen such conduct displayed in a deliberative assembly—so many questions introduced to embarrass and distract the House. Gentlemen, however, calculated wrongly respecting the public mind. If he believed the observations of gentlemen, he should despair of the Republic. He entertained, however, little fear. If gentlemen sincerely believe our

measures subversive of the public happiness, he did not blame them for their conduct. It is their duty to act as they do. But he could not forbear one remark: Who laid these taxes? As to the salt tax, gentlemen took pains to convince us that it will not be improper to reduce this tax. Mr. S. said he was no friend to the tax on salt; but as it did not form a part of the branch of internal revenues, he thought it improper in this place to take any notice of it. There was no district in the United States more affected by the tax on salt, or less by that on carriages, than the district he represented. But the people in that district consider the tax upon carriages as a part of a pernicious system, and will cheerfully bear all the present duties upon imported articles, that this odious system may be abolished, and they will feel that in doing what we have done, we have done all we could do.

Mr. DENNIS.—I may perhaps have expressed my impressions of the motives of my colleague too strongly. I did however think that I had been treated injuriously, and that I had been deprived of the right to make a motion which I thought I possessed.

With respect to the popularity alleged to be intended to be derived from these little motions, I am ready to acknowledge my object is to gain popularity; but it is that kind of popularity that arises from measures calculated to benefit the nation. With this object in view, I believe the internal taxes ought to be retained, and the duties on imports diminished.

But while gentlemen are charging us with aiming at popularity, are they indifferent to it themselves? Has not this report of the Committee of Ways and Means been three months in the making, and when made is it not blazoned in a certain print in a type three times as large as any other of our proceedings are printed in? I do not know why there is this distinction in the type, unless the object of gentlemen be popularity.

Mr. NICHOLSON asked if it were in order, or whether a member had any right to talk about the conduct of a particular printer.

Mr. DENNIS observed, that he would make no addition to his preceding remarks, as he had just finished when his colleague interrupted him.

Mr. S. SMITH said, he did not think his colleague correct in the information he had given the House. He did not himself recollect that he had avowed his intention to renew this motion. Nor did he know that it was his duty to omit doing what he thought right, though it might interfere with his colleague's popularity. He may distinctly take up each of these points; but Mr. S. said he had never seen this mode pursued of jumbling things together. As to the popularity which the gentleman courts, he would inform him that he had voted for the duty on salt, on sugar, and almost all the other dutied articles, and yet he had never lost popularity. He had always thought the best way to get popularity was to act right.

Mr. JACKSON wished, in order to save time, gentlemen would agree to take a question upon all the articles at once.

MARCH, 1802.

Internal Taxes.

H. OF R.

Mr. T. MORRIS said, in that case he should call for a division.

Mr. RANDOLPH moved the previous question. He said that whenever he perceived a question brought forward to vex, to retard, and embarrass the transaction of business, he should deem it proper to require the previous question. Gentlemen may persist in calling the yeas and nays; but, on as many such questions as they choose to move, he said he would call for the previous question.

The yeas and nays were then taken on the previous question, viz. shall the main question, to insert, after "stamped vellum, parchment and paper," the words "the duties on imported brown sugar" be now put? and lost—yeas 25, nays 51, as follows:

YEAS—Manasseh Cutler, Samuel W. Dana, John Dennis, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Reed, Henry Southard, John Stanley, John Stratton, Benjamin Tallmadge, George B. Upham, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Robert Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, and John P. Van Ness.

Mr. T. MORRIS moved to insert the words "duties on imported coffee;" which motion the Speaker declared out of order.

A call was then made, for the question to engross the bill, in order to its being read a third time: On which call,

Mr. SPEAKER declared that, in his opinion, it was not in order to engross the bill, until the main question on the motion on which the previous question had been called for and taken, should be put and decided by the House; and that it was farther the opinion of the Chair, it was not in order to call for, or put the main question on any motion the same day on which the previous question on such motion was called for, and decided in the negative, by the House.

Whereupon, an appeal was demanded from the decision of the Chair; when, an adjournment was called for, and carried.

FRIDAY, March 19.

A memorial of the Washington Building Company was presented to the House and read, pray-

ing that an act of Congress may pass to incorporate the said company, to encourage and promote the erecting, building, finishing, and purchasing dwelling-houses, and other buildings, in the city of Washington.

Ordered, That the said memorial be referred to the committee appointed on the eighth of December last, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the twenty-seventh of January last and the seventeenth instant, the memorials of the Philadelphia Chamber of Commerce, and of sundry inhabitants of the town of Newcastle and its vicinity, and of other citizens of the State of Delaware, and to whom was also referred, on the eleventh instant, a motion "for the appropriation of — dollars, for the erection and repair of piers in the river Delaware," made a report thereon; which was read, and ordered to be committed to a Committee of the Whole House on Monday next.

Mr. S., from the same committee, presented a bill relative to public piers in the river Delaware; which was read twice, and committed to the Committee of the Whole House last appointed.

Mr. SOUTHARD, from the committee appointed on the tenth of December last, presented a bill further to alter and establish certain post roads; which was read twice, and committed to a Committee of the Whole House on Monday next.

Mr. DAVENPORT, from the Committee of Revision and Unfinished Business, to whom it was referred, to examine and report such laws of the United States as have expired, or are now expiring, made a further report, in part; which was read and considered: whereupon,

Resolved, That the Committee of Revision and Unfinished Business be instructed to report a bill fixing the compensation of the officers of the Senate and House of Representatives.

INTERNAL TAXES.

The House resumed the consideration of the bill to repeal the internal revenues. Whereupon, the appeal from the decision of the Chair, demanded yesterday, and suspended by the adjournment of the House, was renewed.

Mr. L. R. MORRIS called for the yeas and nays. A division of the question on the said appeal, was called for by Mr. BAYARD.

And on the question, "is the first part of the decision of the Chair in order, to wit: 'That in the opinion of the Speaker, it was not in order to engross the bill, until the main question on the motion on which the previous question had been called for and taken, should be put and decided by the House?'"

It was resolved in the affirmative—yeas 48, nays 29, as follows.

YEAS—James A. Bayard, Robert Brown, Thomas Claiborne, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William

H. OF R.

Internal Taxes.

MARCH, 1802.

Dickson, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, William Jones, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchell, Thomas Morris, Joseph H. Nicholson, Joseph Pierce, Thomas Plater, Nathan Read, John Smilie, John Cotton Smith, John Smith, of New York, Richard Stanford, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, John P. Van Ness, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

YAYS—John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, William Butler, Samuel J. Cabell, Mathew Clay, John Clopton, John Dawson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, William Helms, James Holland, Benjamin Huger, George Jackson, Michael Leib, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph jr., John Stewart, Joseph Stanton, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Joseph B. Varnum.

On the question, "is the second part of the decision of the Chair in order, to wit: 'and that it was further the opinion of the Chair, it was not in order to call for or put the main question on any motion the same day on which the previous question on such motion was called for and decided in the negative, by the House?'"

It was resolved in the affirmative—yeas 69, nays 4, as follows.

YEAS—John Archer, Theodorus Bailey, James A. Bayard, Phaniel Bishop, Robert Brown, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, William Jones, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchell, Thomas Moore, Thomas Morris, Anthony New, Thomas Newton, jr., Joseph Pierce, Thomas Plater, John Randolph, jr., Nathan Read, John Smilie, John Cotton Smith, John Smith, of New York, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

NAYS—John Bacon, William Butler, John Dawson, and George Jackson.

Mr. DENNIS moved to insert after "paper," in the sixth line, "duties on imported brown sugar."

Mr. DANA said it was not his object at this time to enter into a comparative view of the internal and external duties, but to state, that if it was the sense of the House that the duties on imported articles should be reduced, the regular mode was first to abolish, and then reduce them. This is the regular mode, because by pursuing it, one law will

contain the whole rate of duties. This mode had been pursued in revenue acts heretofore passed. [He here quoted the provisions of several acts, which he stated to be to this effect.] He knew the title of the present bill was to repeal the internal taxes; but the title being the last part of the bill agreed to, may be easily altered and accommodated to its contents. This course, Mr. DANA thought the most consistent, as this may be the only revenue bill brought before the House during the session, and may present the only opportunity of contrasting the external and internal duties.

Mr. HOLLAND.—I am opposed to the proposition made by the honorable gentleman from Maryland, as I conceive it incompatible with the principles of the bill; were this a bill to regulate duties on foreign imposts, a proposition to insert or strike out brown sugar might be proper, as it would also be proper to insert or strike out salt, coffee, &c., as has been so often attempted, with a view, as I suppose, to obstruct or embarrass the passage of it.

Gentlemen on the other side of the House have been told by the patronizers of this bill, that it is a bill to repeal the internal taxes. This being the sole object of the bill, gentlemen cannot suppose that the advocates of it would suffer anything to be attached to it, that would have a tendency to protract or prevent its passage. As I view the proposition to insert imported brown sugar, as having no relation to the repealing the whole system of internal tax-laws, and as I consider the proposition calculated to defeat the passage of the bill, I am opposed to it. I am the more decidedly opposed to it, because the gentleman on the other side of the House have uniformly declared their opposition to the repeal of the internal tax-laws, and have at all times attempted to procrastinate the passage of this bill; this proposition being one other evidence of their intentions, excites me the more strongly to oppose it.

Mr. Speaker, I have long wished to see the time that Government would have it in its power to dispense with these taxes, particularly with excises and stamp duties, because I think them hostile to the genius of our Government. I know that Government has a Constitutional right to impose these taxes. But let it be remembered, that at the time the Constitution was formed and adopted, both by the Federal and State Conventions, it was then understood, that this power was only to be exercised in cases of the greatest necessity.

It was then said by those who advocated this power to be given to the General Government, that nothing but extreme necessity would ever influence the General Government to lay excise, or levy stamp duties; and that the necessity would not probably ever exist. Calculations were then made, and confidently asserted, that three and a half or four millions of dollars of an annual revenue would be quite sufficient to discharge our national obligations, and answer all the demands of the Federal Government; and that a duty on imports of five per cent. would afford this revenue. Under these impressions the Constitution was adopted; and I yet believe, had the Government observed a proper and sound economy, in her first

MARCH, 1802.

Internal Taxes.

H. OF R.

advances, that there would not have been a necessity to have resorted to those taxes. But, contrary to the opinions entertained when the Constitution was formed, and without any occurrence that rendered it necessary, soon, very soon, indeed, Government proceeded to lay internal taxes; and, without any regard to the prepossessions or prejudices of the great bulk of her citizens, she resorted to the most odious of all taxes—excise and stamps—the names alone carrying an odium that cannot be wiped off during the existence of the present generation. Our fathers from Europe, perhaps from the abuse in the collection of those kinds of taxes, or from whatever other cause, held those taxes as obnoxious, and will continue to consider them as odious, in whatever mode you place them. The odium extends into the domestic retirement of the husbandman, and it is in vain that gentlemen say that the citizens are contented with those taxes: let an inquiry be made of the honest laboring husbandman throughout this extended country. Let gentlemen travel and make the inquiry, and it will be found that nothing short of a love of their country, and a desire of peace, have caused the people to be passive under their operation, and they look forward with anxious hope for the time that they are to be relieved from them. The time, I hope, is now come, that their expectations are to be realized.

No part of the country consumes a greater quantity of salt, in proportion to their other consumption of foreign articles, than that part of the country which I have the honor to represent. It is a necessary of life; all descriptions of people must have it. Notwithstanding, if the Government must have the money drawn from them by excise and stamps, and had they their choice, they hold those taxes in such abhorrence that they would tell you to lay the excess upon salt, or upon any other necessary of life, and put down those obnoxious taxes. Such is the disposition of the human heart that you had better take one hundred cents from them in the way they approve than to take a single cent from them contrary to their approbation. These are my impressions of the opinion of my constituents, and notwithstanding the declaration of the honorable gentleman from South Carolina, (Mr. HUGER,) respecting the opinions of his constituents, I think them the same with those of mine. I live near South Carolina, and know their localities, prepossessions, and habits, and do not hesitate in saying that the great mass of the people of that State would prefer a discontinuance of those taxes to any partial reduction of the duties on salt, brown sugar, or coffee.

The gentleman has informed us that his constituents consume a vast quantity of imports, and that the high duties bear hard upon them. I have no doubt but that the citizens on the seacoast, and in the gentleman's immediate district, live fast. Some of them have the character of living fast, and they are able to indulge themselves in luxuries. But the major part of the citizens of that State live in much the same manner as the citizens of North Carolina, or as those of other States; and

I am confident would be highly gratified by a total abolition of the internal taxes.

The same gentleman has supposed that members on this side of the House, to procure their elections, have committed themselves to their constituents for the repeal of those taxes. I know not by what means that gentleman has procured his seat. It may be by his promising to his constituents to have the duties on salt, sugar, and coffee, taken off, and from this circumstance may arise his suspicion of us, and his great anxiety to comply with his promise.

But I will candidly say, so far as comes within my knowledge, no idea existed that Government could do without those taxes. The citizens expected some more favorable modification, so as to enable small distilleries (that at present are entirely cut up) to go on—distilleries that were carried on not from the profit arising from the liquor, but for the benefit of live stock, that, to the great injury of the country at large, cannot work under the present law, which is a much greater number than those that do work—for those that do distil are persons of large capital; persons of small capital not being able to comply with the requisitions of the law. Arrangements of this kind were expected; but the people at large, as well as myself, thought that it would take some time, spent in economy, after such a scene of extravagance, before the taxes could be dispensed with. I had no conception that so great saving could be made by lopping off officers. I had no knowledge of their enormous number; and I am now happy to find that greater retrenchments than were expected can be made, and am highly pleased that Government can go on without those taxes. They have been odious to the people, partial in their operation, and unproductive in the result; and if you charge to their account the evils they have produced, they have brought little money into your Treasury: they are odious and impolitic, for they hold out a premium for perjury. They operate on the moral part of your citizens, by reason of false returns made by those that are regardless of their oaths. They are unproductive, from the expense of collection, the host of officers that must be engaged in the collection, and from the evils they will for ever produce. Evils of this kind are not casually attached to other kinds of taxation; duties on salt, sugar, and coffee may be oppressive, but they are not odious, and they are productive, few persons being engaged in collection.

But it is said by a gentleman from Connecticut (Mr. GRISWOLD) that we cannot do without the revenue arising from internal taxes, and that the people are in the habit of paying them, and that it would be dangerous to discharge them from what they have been accustomed to. It is true that the citizens have been in the harness, and drove on until they have no idea of resistance. But I wish to see the harness thrown off them. I wish to see them restored to that state of freedom that was contemplated at the time of our entrance into the Federal Government; and that they should not be fettered with taxes, that were only intended as the last resort; that were only intended in cases

H. OF R.

Internal Taxes.

MARCH, 1802.

of the first necessity; and whatever may be the consequence of this emancipation, if it throws us in the back-ground, I shall be contented under a belief that it will not be in the power of any succeeding Administration to resort to excises for twenty years to come, unless there is the most urgent necessity. That they will not dare to do it upon imaginary or pretended necessity. The necessity must exist, and not till then I wish to see those taxes resorted to. The honorable gentleman tells us that he has no reliance on the heads of departments, and that more money will be necessary than is required by them.

I believe that it is the first time that the heads of departments in any Government have been suspected of not asking money enough for the administration of Government. It is the first time that the Administration of the American Government has been liable to this charge; and had the former Administration continued, they most assuredly would not have been chargeable with this offence. And permit me to say, that a much larger sum would have been necessary. But the Administration has changed, and with it a change of measures; the enormous sums of thirteen or fourteen millions of dollars per annum are no longer consumed. But does the gentleman suppose that his opinion should be substituted for the calculations made by our heads of departments: that the Legislature ought to adopt his suggestions in lieu of official documents? This, to be sure, would be treating that gentleman with a high degree of complaisance and respect. The honorable gentleman has also informed us that owing to the great industry of the late Administration there are two or three millions of dollars in the Treasury, and by this means Government may go on a year or two. I am willing to admit that the late Administration has been exceedingly industrious in drawing money from the people, and that their invention and industry have extended in every direction and to every object, and that nothing from which money could be drawn was left untried or untouched. But I think in these respects they have drove on too fast, and drawn from the people as much money in six years as ought to have been taken in twelve years. Indeed I believe that by the time the direct tax is paid, that Government will have received all the money that is in circulation. Some time will be necessary to enable the people to obtain a fresh supply.

I also think it bad policy in Government to wrest from the people all their circulating cash. I think it better for the Government that the Treasury should be poor and the people rich, than that the Treasury should be rich and the people poor. If the people are left with money in their hands, it adds to the means of their wealth, and when the necessity of Government calls for aid, that will be given by her virtuous citizens; but it is otherwise if the Treasury is rich and the people poor. I therefore wish to see a rich and independent people, and a poor Treasury, in preference to an indigent people and a rich Treasury.

Much has been said respecting an expression that dropt from a gentleman from Massachusetts,

who I trust is a friend to this bill; the expression was, that the taxes were already half repealed; this has been tortured to mean that the friends of this bill are under Executive influence, and because of an indication in his Message in favor of the repeal the report is an Executive measure. Sir, not only the Executive, but the corresponding good sense of the most enlightened citizens of this country, has already more than half repealed those taxes, and had the sound understanding of the people been consulted, those taxes would not have been laid; and, as we now know from the best authority that Government can go on without them, we should be unmindful of our duty and of the voice of the nation were we not to repeal them.

An honorable gentleman from Maryland, (Mr. DENNIS,) who is the author of the proposition to insert imported brown sugar, announced to the House that his object in this and in all the propositions that he has made on this occasion, is popularity. This being his object he is entitled to all the benefits that he can derive from them. I know not that gentleman's constituents, but it appears to me that they will understand the history of his measures, and if they do, I shall not envy him all the popularity that he shall take by his measures. His constituents will discover, that if any species of internal taxes is retained, that the system is preserved; and would they, for a reduction of the duties on salt, sugar, and coffee, agree to keep up four hundred and sixty lazy drones, that must have a salary equal to the amount of their collection? I think their constituents would think it more advisable to discontinue the system of internal taxes, and thereby compel those idlers to labor for their support, as it is not to be presumed that they are persons of opulence. The benefit the community would draw from their honest labor would be more than the amount of their collections; for I take it that Government is benefited in proportion to the increased productions arising from the labor of her citizens. It is therefore impolitic and odious to increase or continue useless officers. I therefore consider this amendment, with all the others proposed by the gentlemen on the other side of the House, as calculated to obstruct or prevent the passage of the bill, and as I am fully impressed with a belief that the bill ought to pass, I shall vote against the proposition to insert imported brown sugar.

Mr. DENNIS said he only wished a fair decision on his motion, and had intended to leave it to its fate, without a single comment.

His proposition had, however, been from time to time suspended; sometimes by the previous question, sometimes by being divided, and by appeals from the Chair. He wished not to produce delay, but he should continue to persevere in the right to have the question fairly stated to the public, until that object be attained. After the delay arising from appeals from the Chair, and divisions of motions, &c., and the long speech of the gentleman yesterday, he hoped the majority would no longer complain of procrastination. He did not mean to reply to the whole of the observations of the gentleman last up, for they were generally out

MARCH, 1802.

Internal Taxes.

H. OF R.

of order, and much more applicable to the whole bill on its final passage, than to the motion before the House.

That gentleman, said Mr. D., has told us that the object of this bill is to repeal the internal taxes. This, I suppose, we should have discovered without the aid of the gentleman's sagacity. On the contrary, it is my object to retain the tax on carriages, on refined sugar, on retailers, and on sales at auction, because they are applicable to luxuries used by the rich; and to reduce the tax on brown sugar, on coffee, bohea tea and salt, or on some of them, because they may be considered as necessities of life. We are told this is not the proper place to make the comparison, and the gentleman (Mr. HOLLAND) tells us, after this bill is passed, he will co-operate with us in reducing the tax on brown sugar. That gentleman, sir, must know that we cannot dispense with these taxes, and those on sugar and coffee likewise; and that when this bill shall have passed, it will be too late to attempt the reduction he speaks of. This is then the only time and place, when and where we can take the comparison, and make our election, whether we will repeal the tax on carriages, on retailers, on sales at auction, and loaf sugar, or reduce them on brown sugar, tea, and other articles beforementioned.

But the gentleman from North Carolina (Mr. HOLLAND) says the very name of excise is odious to a free people, and that it has been found so in practice. When he proceeds to prove his assertion, he appeals solely to the tax on stills. Without inquiring into the truth of the assertion as applicable to stills, Mr. D. said he would remind him the first motion he made on this subject was, to distinguish between the tax on stills and other internal revenues. Mr. D. said he was willing now to repeal the tax on stills; and if they would confine themselves to that tax, he would co-operate in the measure. He conceived the tax on stills as standing on different ground from the tax on carriages, retailers, and sales at auction, and on refined sugar, precisely because it was very troublesome in its collection, and requires a great many officers to collect it. This gentleman and his coadjutors are very anxious to repeal these taxes, they tell us, because they wish to get clear of a host of officers. They cannot surely expect this to delude the public.

Take off the tax on stills, and they may discharge all these officers, and still collect the tax on the residue of these duties at a lower rate than we collect the impost. They may devolve on the deputy postmasters in some cases, and on the collectors of the customs in others, the collection of these taxes; and thus, sir, all this noise about a host of officers is hushed into silence.

A gentleman from New Jersey (Mr. SOUTHARD) supposes if we devolve the collection of the tax on carriages on the deputy postmasters, it will become burdensome to make the entries—and asks, with a great deal of emphasis, What! will you compel your citizens to travel forty or fifty miles to enter a carriage? Now let us see how far these assertions are supported by the fact. I know of

no county, where there is, at present, more than one collector of this tax; but I know it is common to find three or four, and sometimes half a dozen deputy postmasters in a county; so that the distance to be travelled, to make these entries, would be diminished rather than augmented; and yet, sir, this is the kind of reasoning by which we are to be persuaded it is best to release carriages, and continue the taxes on the necessities of life.

But, says the gentleman from North Carolina, the people wish to be released from taxes; ask them if they do not. I have no doubt it is at all times pleasing to be released from taxes. But the question is not, in the abstract, whether they wish to be relieved from taxes; nor is this the fair way of stating the question. No, sir, ask the American people these questions; whether if we cannot repeal both the internal revenues, and reduce the internal duties, they would prefer to continue the tax on carriages, in order that they may reduce the tax on salt; whether they had rather take off the tax on loaf, or reduce it on brown sugar; whether they will continue to tax retailers of spirituous liquors, in order that they may reduce the tax on coffee; whether they would continue to tax sales at auction, to release the duty on bohea tea: and I will vouch for them they will answer, continue the duties on carriages, on loaf sugar, sales at auction, and retailers, (for these relate to mere luxuries,) and take off the taxes on the other articles, which are necessities of life.

On yesterday it was intimated I was seeking after popularity, and that this was the object of my motion. This sentiment has been reiterated by the gentleman from North Carolina. Without inquiring what is the object of that gentleman and the patrons of this bill, I will candidly confess I do expect popularity from this measure. Popularity, however, is but a secondary consideration, and as such I shall always be happy to enjoy it. My duty I conceive is, whenever a question presents itself, first to consider what system of conduct will be most conducive to the public interest, and secondly, what will best comport with the public will; and if my views of public interest correspond with the national voice, I shall always be happy in the approbation of my fellow citizens. I believe this to be case in the present instance, and therefore I expect to derive popularity from these measures. But at the same time, I will tell that gentleman, that the popularity I aim at is popularity for that political party with which I am associated, and on the prevalence of whose principles rests, in my opinion, the prosperity of this country, and not my own personal popularity. Permit me to tell that gentleman, too, that a seat on this floor is not of so much importance to me as he may imagine, and perhaps not of so much consequence as he may deem it to himself; and that it is at least questionable whether I shall again solicit the representative character. I did not intend, as I before intimated, to pursue that gentleman through his desultory harangue, for the reasons before assigned, and will barely repeat that I will agree to repeal the tax on stills, but that I think, if any revenue can be spared, it is much

H. OF R.

Internal Taxes.

MARCH, 1802.

better that we continue to collect the duties on carriages, refined sugar, and other luxuries, than to continue the present high duties on coffee, bohea tea, salt, and brown sugar.

Mr. HUGER.—I merely rise to answer the observations of the gentleman from North Carolina respecting the remarks I have made on this subject. I had observed that if the object of gentlemen was not merely to acquire popularity, wisdom would have first dictated the making savings, and then the doing away unnecessary taxes. I also stated, that if we could spare \$650,000, it was proper for us to take a general view of the community, and mitigate those burdens which were the most oppressive. I also stated that I was in favor of doing away the tax upon stills and stamps, and for retaining the other sources of internal revenue. With respect to popularity, I will say, that when I first entered into public life, it was at the fag-end of an Administration; and that it has been my misfortune to vote on all occasions for giving to Government the money wanted for the good of the country, and to vote against paying tribute to a foreign nation. I have never told my constituents not to pay their taxes; I have written no pamphlets against the Navy; I have never voted for paying tribute to our enemies, or for refusing to defend my country.

I know that, in the upper part of South Carolina, the tax on stills is heavy. I am, therefore, for modifying it. But I will ask whether in that district of country the taxes on carriages, refined sugar, &c., fall heavily? I said that no State in the Union, in proportion to its numbers, consumed more imported goods than South Carolina; and, therefore, concluded that the taxes on imports should not be continued longer than necessary. With respect to popularity, I have no objection to it; but if ever I obtain it, I hope it will be that which flows from good conduct, and not from my voting this way to-day and that way to-morrow.

Mr. BACON said he did not rise to give information to the House. He believed every gentleman had digested the subject before him, and had formed his opinion upon it; and that nothing more was now necessary than to express that opinion by a formal vote. He believed the only effect of prolonging the debate would be to waste time and incur expense. He conceived that, with regard to all the particular articles in contemplation to be inserted in the bill, they might be introduced with greater propriety into the bill on post roads than into the present bill. Both these bills related to revenue. The post office bill had the superior advantage of being a permanent law, while the object of the present bill is to do away a law, an entire system, odious and expensive; expensive because it requires a vast number of officers to execute it; and odious, because it increased a patronage hostile to a free Government.

The yeas and nays were then called on Mr. DENNIS's motion, to insert after "paper," the words, "duties on imported brown sugar;" which was lost—yeas 31, nays 53, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster,

Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. DENNIS then moved to insert "duties on imported coffee." On which the yeas and nays were called, on the motion of Mr. DANA, and were—yeas 28, nays 53, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, John Stanley, John Stratton, Benjamin Tallmadge, Thomas Plater, Nathan Read, John Cotton Smith, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

An amendment was then made, on the motion of Mr. BAYARD, authorizing the return of money received by Government for the purchase of stamps remaining in the hands of the purchaser.

The question was then put on engrossing the bill.

Mr. BAYARD moved the postponement of the question till Monday.

The question was taken on Mr. BAYARD's motion and lost.

MARCH, 1802.

Internal Taxes.

H. OF R.

The question was then taken by yeas and nays on engrossing the bill, and carried—yeas 60, nays 26, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanael Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Archibald Henderson, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jun., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

NAYS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stratton, Benjamin Tallmadge, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, and Lemuel Williams.

When, Monday was fixed for the third reading, and the bill, with the amendments, ordered to be printed in the mean time.

MONDAY, March 22.

A petition of sundry merchants of the town of Natchez, in the Mississippi Territory of the United States, was presented to the House and read, praying such a revision and amendment of the laws of revenue as will relieve them from the payment of double duties on merchandise shipped from the ports of the United States to any port in the said Territory.

Memorials of sundry merchants of the town of Boston, and its vicinity, in the State of Massachusetts, and of sundry inhabitants of the towns of Norwich and New Haven, in the State of Connecticut, were presented to the House and read, respectively praying relief in the case of deprecations committed on the vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, during the late European war, by the ships and cruisers of the French Republic.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" to which they desire the concurrence of this House.

INTERNAL TAXES.

The bill for the repeal of the internal taxes was read the third time.

On motion of Mr. RANDOLPH the blank in the first section was filled with the 30th day of June

7th CON.—34

next, which fixes the period of repeal of the internal taxes; and the blank in the second section was filled with the 30th of April, which is the day from which the office of superintendent of stamps is to be discontinued.

The question was then put on the passage of the bill, when Mr. S. SMITH spoke in favor of its passage.

Mr. S. SMITH.—Mr. Speaker, I was one of those who, at the meeting of Congress, did believe that it would be prudent to repeal the stamp tax only at the present session, and to permit the other internal taxes to remain until the next session of Congress. The repeal of the whole of those taxes, being proposed, it became my duty to examine the subject fully; this I have done, and the result has been favorable to the repeal. I shall ask leave to make a few observations on the bill now on its passage.

It does not appear that any gentleman desires to prevent the repeal of the tax on domestic distilled spirits, for no member has moved to strike it out of the bill. I take it for granted, therefore, that its repeal is desired by all. Nor do I believe that the repeal of the stamp act is seriously objected to. I shall, in consequence, confine my observations principally to those duties, the repeal of which has been opposed. Three of those I voted for retaining in the bill, that is, for the repeal, to wit: licenses for retailers of liquors, sales at auction, and carriages for the conveyance of persons. My reasons I will now submit to the House. The laws laying those duties passed in 1794 for two years, were afterwards continued until August, 1801, and on the 23d of February of that year, were made perpetual. I have never yet heard any good reason assigned why a retailer of liquors should be compelled to pay for permission to pursue his business more than a wholesale dealer in liquors, a retailer of dry goods, a wholesale merchant, a lawyer, a doctor, or any other profession by which man obtains an honest livelihood. The exigency of the times induced the laying of that tax; but it was then said, that it was only for a short time, and would be repealed whenever it could be spared; it can now be spared, and ought to be repealed, for it is unjust. This tax ought to be repealed for another reason; its inequality as it relates to the States, and particularly as it relates to Maryland, the State I have the honor to represent. I have examined the documents from the Treasury, and find that Maryland paid for licenses in 1800, four thousand three hundred and ninety dollars, having nine members (under the new census,) Virginia having twenty-two, paid only five thousand six hundred and eighty dollars, and North Carolina, having twelve members, paid but two thousand five hundred and fifty-five dollars. Nay, Mr. Speaker, Maryland paid more than was paid by all the five States of Rhode Island, Vermont, Kentucky, Tennessee, and South Carolina, the whole of those States paid only four thousand five hundred and fifty-five dollars for retailers' licences. Can this be just? Can it be right? Ought a member from Maryland to continue a tax so unequal on his fellow-citizens?

Sales at auction.—This tax falls on those who, from necessity, or from a desire to raise money to meet particular objects, send their goods for public sale; or, it is paid by persons about to remove from one part of the country to another, and sell their little all to enable them to remove with their families. I have never yet heard any reason of force to show why a man who sells his goods at public sale should pay a duty on sales not paid by those who sell at private sale. This tax is still more unequal in its operation than that on licenses. Maryland paid, in 1800, for the tax on auctions, six thousand seven hundred and thirty-four dollars; Virginia, four thousand seven hundred and thirty-one dollars, and Connecticut only one hundred and forty-two dollars. Can it be just, that Connecticut, having nearly as many inhabitants, shall pay but one hundred dollars of a tax, where Maryland contributes to the same six thousand seven hundred and thirty-four dollars? It may operate with gentlemen from that State as a good reason for retaining the tax, but certainly ought to have had a contrary effect on my colleague, (Mr. DENNIS.) The great inequality of the tax on auctions will appear more striking when gentlemen turn to the document, and see that Maryland actually paid more than eleven States, to wit: New Hampshire, Rhode Island, Connecticut, Vermont, New Jersey, Delaware, Kentucky, Tennessee, North Carolina, Georgia, and South Carolina; those States will have fifty-eight members on this floor, and paid, in 1800, but five thousand six hundred and twenty-six dollars on the tax on sales at auctions, when Maryland paid six thousand seven hundred and thirty-four dollars.

Carriages for conveyance of persons.—This tax has been considered by many as a direct tax under the Constitution. I did not think so on its passage, and voted for it, but now I cannot but have doubts on the subject, when I recollect the operation of the late direct tax, and the inequality of the carriage tax, as it respects the States. Wagons, on similar principles, might be taxed, and if they were, the New England States would pay no part of the tax. Would this be just? Maryland paid, of the duty on carriages, eight thousand six hundred and eighty-three dollars; Connecticut only four thousand five hundred and sixty-four dollars, being little more than one-half thereof, and the seven States of New Hampshire, Rhode Island, Vermont, Kentucky, Tennessee, South Carolina, and Georgia, pay together only three hundred and one dollars more than Maryland. The tax on carriages falls particularly hard on the district I represent. In the city of Baltimore more than one hundred carriages for hire parade the streets, besides a large number employed from that city on the roads. The owners earn an honest livelihood thereby; a tax on their carriages for conveyance of persons appears to me as unjust as a tax would be on carriages for conveyance of goods. Sir, this tax does not fall, in my district, on the luxurious alone. I am inclined to believe that more than two-thirds of the tax is paid by citizens keeping carriages for hire, nearly the whole of the other third by our citizens for their

convenience. I am persuaded that my district alone paid more, in 1800, to the carriage tax than was paid by Vermont, Kentucky, and Tennessee, and perhaps Georgia together. Can I (knowing this circumstance) ever give my consent to continue a tax every way so unequal?

I will be told, that, taking the whole four objects proposed to be struck out together, to wit: licenses, auctions, carriages, and refined sugar, that the result would be more equal. Sir, I have examined that subject also, and have found the result nearly similar. The gross amount collected on those four objects is two hundred and fifty-nine thousand eight hundred and ninety dollars; of this sum Maryland paid thirty thousand and sixty dollars, one eighth of the whole, and nearly double the fair proportion of that State. Connecticut paid but ten thousand five hundred and twenty-one dollars, being little more than one-third of that paid by Maryland. I will not say that this was good cause for gentlemen from that State to vote for the continuance of those taxes, but I will say, that it would be a bad reason for my colleague (Mr. DENNIS) to offer for moving to strike them out of the repealing law. But, sir, the inequality, and, of course, injustice, will be more clearly shown, when it is known that Maryland paid nearly two thousand dollars more of those four taxes than were paid by the seven important States of New Hampshire, Vermont, North Carolina, South Carolina, Georgia, Kentucky, and Tennessee. Those seven States will have, after the next election, in this House, forty-two members, and have paid only twenty-three thousand three hundred and four dollars, when Maryland paid thirty thousand and sixty dollars, and will have nine Representatives. This must be unjust; the repeal ought to be made, or on some future occasion those States may think it convenient to increase those taxes of which they pay so very little.

But, Mr. Speaker, we have been told that taking the whole objects of internal taxation into one view, they will be found nearly equal as respects the States. I have also examined that subject, and have found the inequality as it respects the State I have the honor to represent, continued. Maryland paid, in 1800, of the amount actually received into the Treasury, charges and drawbacks deducted for that year, seventy-two thousand seven hundred and thirty-five dollars. Connecticut paid only twenty-two thousand six hundred and ninety-three dollars, not one-third of the payment made by Maryland. North Carolina paid forty-six thousand four hundred and seventy-nine dollars, and the whole seven following States only fifty-nine thousand and ninety-three dollars, to wit: New Hampshire, three thousand one hundred and forty-nine dollars; Vermont, one thousand three hundred and ninety-seven dollars; New Jersey, sixteen thousand one hundred and nine dollars; Delaware, seven thousand eight hundred and thirty-six dollars; Georgia, three thousand dollars; Tennessee, four thousand nine hundred and nine dollars; and Connecticut, twenty-two thousand six hundred and ninety-three dollars:

MARCH, 1802.

Internal Taxes.

H. OF R.

Add to those the amount paid by the wealthy and important State of South Carolina, and it will be found that one-half the States of the Union paid less than ten thousand dollars beyond the single State of Maryland of the whole internal taxes for the year 1800. Thus you see that New Hampshire, having more than half the inhabitants of Maryland, and Vermont having nearly half her numbers, pay scarcely any part of the internal taxes. Are we, then, to be surprised if those States which scarcely pay anything—or if Connecticut, which pays so small a part of the internal taxes—should be found voting against the repeal? Yes, sir, we ought to be surprised; the injustice is so glaring, that the members must, in honor, vote for the repeal of taxes to which their citizens contribute so little; justice demands it of them, and they will obey her voice.

The very great inequality of each of those taxes—of the four conjointly, or of the whole of the internal duties taken together—will plead my apology with such of my colleagues as may have conceived that those taxes ought not to be repealed. Indeed, sir, I cannot but believe that had the subject presented itself to the mind of my colleague (Mr. DENNIS) as it has to mine, he would not have given the opposition he has to the repeal. I must believe that he will not now vote for the continuance of taxes which fall so unequally on his State as those do. We have been told that the subject ought to be considered in a national point of view, and that those duties are objects of luxury. To the first, I do not subscribe. I have always supposed that my duty was to prevent an inequality of taxes being imposed on the State I was elected to represent, and carefully to attend to the interest of my constituents. I have yet to learn what luxury there is in drinking whiskey; nor have I been informed that retailers of liquors find much luxury in paying for their licenses. Does the seller at auction find it luxurious to pay a duty on the amount of his goods sold? The owner of an elegant carriage may feel the luxury of riding in it; but I doubt whether the man who keeps carriages for hire, or the people who keep chairs to carry their families to church, find much luxury in paying the tax. My colleague (Mr. DENNIS) will tell us what is the luxury arising out of the stamp act. It is true that four hundred officers will be dismissed by the repeal; but however I may regret the injury some of my acquaintances may suffer, yet I do not believe that their loss of office will greatly disturb the tranquillity of the people; and permit me here to remark, that had the taxes on the licenses, auctions, refined sugar, and carriages, been continued, it would have required a great proportion of those four hundred officers to collect them; the cost of which would have been too great for their amount to bear. May not the desire of keeping their friends in pay, be a strong inducement with gentlemen to retain the taxes? To create offices has been the favorite system with some gentlemen; the system of the Republicans is to lessen their numbers, and dismiss all that are useless.

Mr. Speaker, it has been said that the revenue

will not be sufficient (without the aid of the internal duties) to meet the exigencies of our Government; and yet we have seen those very gentlemen who make use of that argument, voting to repeal (in addition to the internal taxes) the whole duty on bohea tea, sugar, coffee, and salt, making together an amount of more than two millions of dollars. Had they succeeded, the Government must have stopped; it could not have met its engagements. But did they intend to succeed? No, sir, if they could have tacked those items to the bill, they would then have voted, I have no doubt, against the whole bill, and thus attained their sole object, to wit: to prevent the repeal of any of the internal taxes, or any reduction of the duty on salt, sugar, &c. Can we, sir, spare these taxes, and meet the wants of Government? I think we can. The Secretary of the Treasury reports, and it is conceded by all, that the revenues were fully equal to the expenditures under the existing laws, at the commencement of the present session; that having been the case, if the present Congress have already made savings by a reduction of the army, and a dismissal of useless officers to the amount of the internal taxes, then certainly the Government will be fully competent to meet every demand. Have we done this? I think we have, to wit:

On the Army Establishment, the difference of expenditure between that repealed and the law just passed, is, agreeably to the report of the Secretary of War	-	-	\$500,000
On the Naval Establishment (between the sum estimated on the meeting of Congress and that now required) a saving will be in consequence of a fall of wages and provisions of	-	-	200,000
On the Judiciary (the law repealed)	-	-	31,500
On the forts (less than the estimate)	-	-	70,000
Making together	-	-	801,500

The average annual receipts arising from the permanent internal taxes, has been declared by the Committee of Ways and Means (and their report has been admitted to be correct) to amount only to \$600,000; the highest calculation has been \$650,000. This being the fact, we can safely spare taxes to that amount, having already retrenched our expenses above \$800,000. We shall make yet other savings, so as to make the whole, as I expect, amount nearly to one million of dollars. To save from public expense will be more pleasing to the people than to raise a similar sum from them by taxes.

It may be thought by gentlemen who have not particularly attended to the subject, that we shall be unprepared to meet the demand against the United States lately arranged under the British Treaty. I do not know the precise amount of the claim stipulated to be paid, but I do know the sum limited by the late Administration, beyond which our Minister could not go, and I have not a doubt of our being prepared to pay that amount. Gentlemen will turn to page eleven of the Secretary's report, and they will be satisfied. The Sec-

H. OF R.

Internal Taxes.

MARCH, 1802.

retary says, after stating a number of items of receipts. "Those several items (exclusively of several balances due by individuals, a part of which will eventually be received into the Treasury) constitute a sum exceeding three million of dollars, and may for the present be considered as resources sufficient to meet the demands against the United States, which may be eventually payable on account of the sixth article of the treaty with Great Britain, and of the — article of the convention with France."

Mr. Speaker, it cannot fail to give pleasure to our constituents, when they know that we have met the payment of the interest on the deferred debt; that we have as much money in the Treasury as was left there by the late Administration; that we have discharged, in the course of the year 1801, of the principal of the public debt, two million two hundred and twenty-nine thousand dollars; that we have a fund amounting to three million of dollars ready to meet the demand under the British and French Treaties, or to meet any unforeseen deficiencies of revenue, that we can, with perfect safety (as it relates to our revenue) repeal the internal taxes; and can, notwithstanding appropriate a sum toward the discharge of the public debt, such as will, in eight years, pay thirty-two million of dollars, and in fifteen, completely discharge the whole debt. My colleague (Mr. DENNIS) boasted that in nine years, four million of the debt had been paid, the same sum will, in future, be paid off annually, and that without laying any new tax; on the contrary, I am of opinion, that we may soon lessen the duties on some of those articles that gentlemen wished to clog this bill with.

Mr. Speaker, during the recess of Congress, the President by reducing the marine corps from twelve to four hundred men; by an excellent arrangement, as related to our debt to Algiers, by the recalling of unnecessary Ministers at foreign Courts; by the dismissal of useless officers, by an economical arrangement of the Quartermaster's department of the Army, and by other judicious measures, did save to the United States an annual expenditure of nearly four hundred thousand dollars. The President has recommended the lessening other expenses, and Congress have adopted, and will adopt, such as will, I expect, amount to one million of dollars. Let us therefore give his honest endeavors to save the public money, and to relieve the burdens of the people, our warm support and assistance.

Mr. Speaker, seeing that the internal taxes taken collectively, or each tax taken separately, are unequal in their operations as it relates to Maryland, and particularly so as it relates to my district—seeing that their collection requires four hundred officers, and that the pay of those officers consumes a large proportion of the money collected from the people—seeing by the saving made from our usual annual expenditure that we can safely spare the amount of those taxes; and believing that the people will the more readily submit to pay taxes that are necessary when they know that they will be relieved therefrom whenever the exi-

gency shall cease to exist; I shall conclude by expressing a wish, that the bill to repeal the internal taxes may pass.

Mr. DANA said he could have wished, before the observations of the gentleman from Maryland, to have submitted a few remarks on the defects of the bill. [He here specified some amendments, which, in his opinion, the bill required.]

Mr. GRISWOLD moved to recommit the bill to the Committee of the Whole House for amendment, and stated wherein he conceived it to require amendment.

MESSRS. RANDOLPH, JONES, JOHNSON, and GRISWOLD, vindicated the correctness of the provisions of the bill; when the motion to recommit was taken, and lost—yeas 26.

Mr. DENNIS.—Having been up frequently and involuntarily on this bill, it is with reluctance that I rise again. I have to regret my absence at the time my colleague animadverted upon the remarks which had previously been made by me, or on the proceedings in the progression of the bill in which I took a part.

Mr. S. SMITH said he had made no remarks respecting his colleague in his absence.

Mr. DENNIS.—I beg pardon for the mistake. My colleague, however, seems to have discovered a new argument, not derived from the general principles of the bill, but from local considerations. He conceives that Maryland pays infinitely more than her proportion of these taxes, and that it is therefore his duty to vote against their continuance. But I have frequently observed that the only way to inquire into this subject is to compare our internal and external revenue. Had my colleague attended to this circumstance he would have spared his remarks.

We have not documents whereon to ground a general view of the subject. But in the last year it appears there were collected of the internal taxes \$72,735 in Maryland, and in the whole United States \$919,719. I will remark, that if Maryland pays more than her proportion of the internal revenue, she pays infinitely more of the external duties. Of these last, Maryland pays more than a million, while the whole amount is only ten millions; that is, she pays one-eighth part of the whole external revenue, which is greater than the proportion of seventy-two thousand to eight hundred and nine thousand dollars, the sum calculated upon by the gentleman from Maryland.

I do not conceive that any accurate estimate of the sum actually paid by each State can be derived from the documents before us. I know that though a million of external duties is paid in Baltimore, yet that the whole of that sum is not paid even by the whole State of Maryland. The same is the case with the internal duties—for instance, that on stamps is first paid by the merchants, who do not ultimately pay it, but throw it on the consumer. The same is the effect of the duties on refined sugar and on sales at auction. For no duty is derived from sales at auction under an order of court. The sales, on which duties are paid, are chiefly derived from large commercial towns, and they are not paid exclusively there, but by

MARCH, 1802.

Internal Taxes.

H. OF R.

the great body of citizens of the United States, who consume the articles sold.

In Virginia, there is paid on stamps \$17,000; in Maryland, \$23,000. Thus it appears that in Maryland, which is so much smaller than Virginia, there is paid in the first instance a greater proportion of the duties on stamps; yet I cannot suppose there is a greater proportion of this tax actually paid in Maryland than in Virginia, as I know that Virginia consumes more. The document, therefore, throws no light upon the subject; the whole statements of my colleague are fallacious. The internal taxes, too, are chiefly imposed upon luxuries, the consumption of which bears no proportion to population. They are taxes operating upon a particular description of citizens; in general upon the wealthy; of course, where there are most wealthy citizens, the greater portion of these taxes is paid. This is particularly the case with the carriage tax.

I have before expressed my disposition to repeal the tax upon stills, not for the reason assigned by my colleague, because Maryland pays more than her legitimate proportion of this tax. I know that those who distil the most consume the least of imported spirits. Now the tax upon domestic spirits is infinitely less than that on imported spirits. The first pays — cents, and the last 40 cents. The necessary consequence, then, of substituting domestic in the room of foreign spirits is, that we are liberated in that proportion from the duty on the latter. I am, therefore, for abandoning this tax, not because I think Maryland pays more than her proportion of it, but because it is inconvenient in the collection, and requires a great number of officers to collect it.

The real question is, whether the tax on internal articles is greater than that upon imported articles? No doubt the honorable gentleman (Mr. SMITH) pays a greater tax upon internal than upon imported articles. But let the question be put to the mechanics of the country, and they will answer, retain the taxes upon all the internal articles except stills, and reduce the duties on those imported articles which are necessities of life. Though a few wealthy individuals may pay large sums to the internal revenue, yet it will be found that nineteen-twentieths of the citizens of Maryland pay the most on imported articles.

This comparative view, in my opinion, is the only accurate one which can be taken. I am, therefore, still under the impression that if we can dispense with part of our burdens, it is better to retain part of the internal taxes, all excepting that on stills, and make a diminution in the duties on imported articles of the first necessity.

Mr. T. MORRIS.—We are called upon to destroy at one blow all our sources of internal revenue, and to rely for the protection of the Government exclusively on the external taxes. I am, for two reasons, against this step. In the first place, I am not convinced that we can do without this revenue. It may be deemed rash in me, after the gentleman from Maryland (Mr. S. SMITH) has declared that he has inquired into the expenditure and the savings, and is satisfied of the extent of

the last, to say that I am not convinced that we can dispense with these taxes. If I had not doubted before, his style of reasoning would not have convinced me. We do not know what sum we may be obliged to pay to Great Britain under our treaty with her, nor do we know the extent of our obligation, which a large portion of our citizens think well founded, to indemnify for French spoiliations. Is it then proper to diminish our revenue before we have inquired into these circumstances?

But, in the second place, however well convinced I might be that we could spare these taxes, I would vote against the repeal of the taxes upon pleasurable carriages, sales at auction, refined sugar, and licenses to retailers, because they are for the most part paid by the wealthy and luxurious.

The gentleman from Maryland (Mr. S. SMITH) objects to the tax upon carriages, because it falls heavily upon the State; he says, in Baltimore there are a great number of hacks, which are not owned by the rich. But I will ask the gentleman who pays the hack hire, the poor or the rich? Do the poor of Baltimore ride about in hacks? The very circumstance of the existence of so great a number of hacks proves the carriage tax not to be oppressive.

The aggregate of the taxes upon carriages, brown sugar, licenses, sales at auction, and stamps, is \$481,000. Make a deduction of \$24,000 for the expenses of collection, which I am persuaded will be quite sufficient, and there remains a balance of \$457,000.

If the state of the finances admitted this reduction, I would prefer lessening the burden on the other articles, which chiefly falls on the yeomanry of the country; on bohea tea, for instance, which pays twelve cents, and on brown sugar, which pays five cents per pound.

What are the objections made by gentlemen to our plan? They say they are for repealing the internal taxes in preference to all others, because they require a host of officers, and because they increase Executive patronage, which is odious to the American people, and hostile to the genius of a free Government. But I take this to be fallacious. For I cannot conceive that those who object to Executive patronage are seriously adverse to it. We are to judge, not from their professions, but actions; and when we see men of merit over the whole Union deprived of their offices—

Mr. NICHOLSON called to order.

Mr. MORRIS.—If the objection derived from the alleged expense of collection be solid, it may easily be removed by turning over the collection to the deputy postmaster, who will consider five per cent. as a sufficient premium. Whence, then, the necessity of destroying a whole system because a part of it is defective? If the number of officers or the expense be too great, lessen them, but do not on that account destroy the system altogether.

Much has been said respecting the duty upon stamps. I will acknowledge that, when it was first laid, it was odious, because it was not then understood. I believe, however, that it is now a

popular tax in a great part of the Union; and if the House had permitted a document for which I moved, to have been produced, it would have appeared to be a tax chiefly paid by the opulent part of the community. I believe that in my part of the country it is as popular a tax as any paid.

Gentlemen say the people are averse to these internal taxes, and in the same breath they inform us that if they are laid aside by this Government they will be resumed in the several States. I do know that in some of the States they are so little odious that there is a double tax, one laid by the State and the other by the United States. This of itself is sufficient to prove that the disposition of the country is not against them.

Had gentlemen convinced me that we could dispense with the tax on stills, I would have agreed to abandon it. But they have not convinced me, and I am not, therefore, in favor of abandoning it. But if they are willing to double the tax on the other five sources of internal revenue, I will join them in taking off the duty on stills.

A strange charge is brought by gentlemen. They accuse us with courting popularity. But how long is it since, in the estimation of gentlemen, it has been a crime to appeal to the sentiments of their constituents? What! if it is deemed by a part of the House that a tax should be taken off of some articles, though the majority are for taking it off of others, are we to be called base courtiers of popularity, when we address our remarks, not only to the sober sense of the House, but also to that of the people? If the charge of courting popularity apply anywhere, it is to the President. Was it proper in him to designate any particular tax as a fit one to be removed? I must say that this was going beyond his duty. For, as all revenue systems must originate in this House, it rested with us exclusively to originate as well as decide whatever relates to revenue.

I have another objection to the repeal. Should war, or any other untoward event occur, I ask, what resource is there left to which we can resort? If such untoward events should occur, we cannot resort to our taxes on articles of luxury, for the means of indulgence will be gone. We must resort to excises. It is owing to the flourishing situation of the country that we are now enabled to tax luxuries. But when they cease to be consumed, we must resort to objects of prime necessity. I ask, then, if the situation of the country is such as to warrant this abandonment of all our internal resources? Do we not know that a formidable foreign Power is to settle on our frontier? Do we not know that a nation, not the most tranquil, is to take possession of Louisiana and Florida? Are we, then, in such critical circumstances, to squander away our revenues?

Mr. Lowndes.—I did intend to reply to the remarks of the gentleman from Maryland (Mr. S. SMITH,) but I have been anticipated by the gentlemen who have preceded me. I will therefore confine my remarks to points not animadverted upon by those gentlemen.

The gentleman observed that these taxes, if

hereafter required, may be restored, and he added the people of this country are not like the people of other countries. This I do not believe. I believe they are like other people. I will not be their flatterer. I believe that they, like other people, when a new tax is laid, will be against it. I should not have troubled the House on this subject, had not the Committee of Ways and Means remarked, that however favorable they might be in the abstract to a repeal of these taxes, they would not have recommended a repeal, if they believed that it would interfere with a punctual compliance with our engagements. If this was their opinion, it was incumbent upon them to show us that the repeal would not interfere with a punctual compliance with our engagements, which they have not done.

I have voted for striking out all the articles moved, not that I am against retaining the tax on stills. On the contrary, I believe it the best tax, because it is paid by those who pay no other tax, and because taxes should be equally distributed throughout the community. Besides, the duty on distilled spirits is but thirteen cents, while that on imported spirits is twenty-eight cents. Surely, then, those who consume the former have no reason to complain. The difference of duty is a bounty on the consumers of distilled spirits; and is there any reason why the consumer of home made spirits should be more exempt from taxation than the consumer of foreign spirits?

Another objection to this tax is urged. It is said, that it creates an Executive patronage hostile to the genius of a free people; and that it is oppressive in the collection. But in what is it oppressive? Have we received a single petition against it? Nor can I conceive how it is odious to the genius of a free people. I know that formerly in other countries excises were odious. Collectors possessed summary jurisdiction, and the trial by jury was taken away. But do those regulations exist with us? I have read some petitions that were formerly presented on this subject; wherein the petitioners complain that they were obliged to write in large letters, "Stills," on their houses. But, if there existed no stronger ground of complaint, this is a proof that the tax was neither inconvenient nor oppressive.

We are told the collection requires a great number of officers, and that it extends the patronage of the President. There are about four hundred officers, scarcely twenty to a State; and yet gentlemen are alarmed at the danger of this patronage to the liberties of the people. Some of these officers receive only thirty-two dollars a year, and these are the hosts that are to destroy the liberties of the country. I think differently of Executive patronage. It may extend so far as to excite the hopes of expectants, but not to gratify them. Every appointment that makes one friend, creates twelve enemies. The Executive will derive no security to his power from this patronage. He can only excite expectation. As a proof of this, we see, from the papers, that, instead of filling up vacancies in a Constitutional manner, the people are called together to designate the officer, and

MARCH, 1802.

Internal Taxes.

H. OF R.

what was intended to be committed to the discretion of a constituted agent, is exercised by a junto.

The tax on stills has existed since the year 1790. Of late we have heard no complaints, we have seen no petitions; and I think it can impose no hardship on the community, because I see the revenue steadily increasing. But suppose there are hardships, is there no medium between the entire continuance and abolition of it? Gentlemen have long enough exercised their talents for destruction; let them now use them for beneficial purposes.

We have heard much about retrenchments; but the retrenchments yet made, consist altogether in sound. It is said the Judiciary is abolished. I am sorry for it. But I have seen a letter from a gentleman on the other side of the House, which says, the salaries of the judges are not touched. There is, therefore, on this head, no retrenchment; and if it is the intention of gentlemen to appoint other judges, the expense will be increased.

The Secretary of War has told us laconically that in his department there will be a saving of four or five hundred thousand dollars. But are we to be guided by expressions so vague? How is this saving to result? What difference is there between the present and the old establishment? As to men there is no real reduction, as the old establishment was not full. On the other hand, there will be an increased expense, from the dismissed officers receiving one month's pay for every year they have been in the service.

It is also said there is to be a reduction of \$200,000 in the Navy Department. But one report of the Secretary says there is to be no reduction, and another that there is to be a reduction of \$200,000. Which is to be credited?

But are there no new expenses? Have gentlemen forgotten that we have passed a law for an increased representation, which will add forty-three members to the present number, at an expense of about \$1,000 a year. I say that this new expense amounts to more than all their boasted savings. If, however, they really wish a saving of the public money, why not reduce our own compensation to two dollars a day? This would have two good effects. It would lessen our per diem allowance, and shorten our sessions.

I have another reason against the repeal of these taxes. I am informed that the President has received official information that Louisiana and Florida are ceded to France. We know there is a dispute respecting the boundaries of these provinces. Is it then wise, at this critical period, to dispense with your internal resources? In case of a war, your revenue derived from imposts would be suspended. If these internal taxes are retained, in such an event they might be improved and enlarged.

I have another strong argument against the repeal. I allude to the claims of our merchants, whose justice cannot be resisted. I believe this country has acquired a fortunate release from its obligation to guaranty the possessions of France in the West Indies. Had we been called on during the war in Europe to take efficient measures to

guaranty these possessions, a refusal would have been a cause of war. I think, therefore, we have purchased the exemption cheap. But on every principle of justice or honor we are bound to make good the claims of our merchants on the French Government, which we have thereby extinguished.

We have heard from gentlemen much about their intention to reduce the national debt, and I believe the Committee of Ways and Means have reported an appropriation of seven million three hundred thousand dollars for that object. I would be glad to know where this sum is to come from? If gentlemen are sincere in their desire to pay off the debt as speedily as possible, they should have postponed, at least for one year, the repeal of these taxes. They should have recollected, that they are as yet inexperienced and untried in the administration of the Government.

Mr. LOWNDES concluded by observing, that in his opinion, the patronage of the Executive in appointment to office, was not to be dreaded; but that if ever the time should come, which, he hoped to God, never would, when members of this House should be so obsequious to the will of the President, as to vote for a bill at his nod, such patronage would be dangerous indeed.

A motion was made to adjourn, which was lost.

Mr. DANA.—It is not my purpose to detain the Committee long; but as the subject is important, it cannot be improper to offer some observations upon it. It may seem strange that any person should be induced to oppose an abolition of taxes. The affairs, however, of Government, the honor and public faith of the nation, cannot be always supported without some pecuniary burdens, and when these require the imposition, taxes should be levied, however unpopular the act. We were told, at the opening of the session, that strong and efficient measures would be taken for the speedy discharge of the public debt. This is the first revenue bill introduced into the House. Is it an evidence of such disposition? I know no proper way of extinguishing the public debt, except by paying it honestly. I do not know how gentlemen mean to extinguish it; but I am sure they cannot rightfully extinguish it by destroying the means of payment. If they wish rightfully to free the country from it, instead of continuing the taxes, they ought to devote themselves to its extinction. The Navy six per cent. may be redeemed at pleasure. Other stock, too, is comparatively low in the market, much lower than it may be in a few years. This, therefore, is an eligible season for the advantageous purchase of it with the proceeds of the taxes.

I have a further argument to oppose to the abolition of these taxes. They are pledged explicitly to the payment of the public debt. [Mr. D. quoted the law to that effect.] These sources of revenue are the more important to the public creditors, as they may be compared, in point of security, to a mortgage of real estate, not subject to the casualties of war or other misfortunes.

What will be the effect of the proposed repeal? Your public debt is to be paid. You abolish an annual revenue of several hundred thousand dol-

H. OF R.

Internal Taxes.

MARCH, 1802.

lars. Compute the time during which you will be discharging the debt, and you will see that the abandonment of these taxes will be equal to an abandonment of six or seven millions. To this amount you throw additional burdens upon commerce, and to a proportionate extent of time, you postpone the ultimate payment of the debt.

What proof is there that this debt will be speedily extinguished by payment? Is it intended that the Navy shall pay it? The Secretary of that department strikes out \$200,000 from his former estimate; but is it not known, that the plan of naval supplies must be in part, if not wholly abandoned under this last estimate?

The report from the War Department is of a still more singular kind. The Secretary says, the difference between the expense of the present and the last establishment, will be little more or less than five hundred thousand dollars. The Committee of Ways and Means say there will be a saving of a sum exceeding \$400,000. Thus we see there is a difference between the two statements of about \$100,000. Is this information sufficiently correct to rely upon?

But is there really such a saving? The only evidence we have on which we can depend must be derived from the experience we have had. A difference between the military expenses of the last and the present year may arise from the reduction of price as to provisions, clothing, and transportation. But this reduction has been estimated at no more than \$200,000 for both the Army and Navy. The estimate of the Secretary of War for posts and garrisons, evidently is predicated upon the principle of having the full number he has stated, of effective men. What then is the real military reduction? As to the former establishment, it is well known that it never was full. According to the return laid before the House, there were in the service 4,051 men including the officers. According to the Peace Establishment, lately adopted, there will be 3,040 men, besides officers, making together about 3,270. The difference between the two is 780. What would be the cost of these 780 men? In ordinary service, the average of \$200 a year has been computed as sufficient for officers and men. Suppose the service on the frontier to be more expensive, and make an allowance of \$300 for each military individual—then the whole cost will amount to between \$200,000 and \$240,000. If you allow \$400 for a year, which is double the ordinary average, the amount will be about \$300,000. During the Indian war, when the prices were enormous, the average expense for each military person did not, I believe, exceed \$400. It cannot now, therefore, be so high—and it follows that the actual saving cannot be so great as that estimated by the Minister at War, by one or two hundred thousand dollars.

Much has been said respecting the carriage tax. It is said that in New Jersey there are a great number of carriages owned by persons in moderate circumstances, which pay a duty of two dollars. If the tax operates oppressively, modify it. The whole number of carriages, which I suppose

are referred to, is but about eight hundred for the United States. All that is derived from that species of tax does but little exceed the sum of \$1,600. Strike it out then, if improper—it amounts to nothing in this question. The gentleman from Massachusetts, (Mr. BACON,) affects particular solicitude for clerical men. I am not disposed to question the sincerity of his regard for them, but the argument proceeds on a supposition which is fallacious. Undoubtedly it would be improper to select that description of citizens, or those in the habit of attending public worship, as peculiar objects of taxation. If this were the principle of the duty on pleasure carriages, it might justly be censured. But when such citizens are able to keep their carriages, and exhibit the ordinary evidences of prosperity, they, like other persons in similar circumstances, may be taxed by the Government; and I hope gentlemen do not mean to evince their ideas of those who are religious by considering them as doomed to perpetual poverty.

Some of the reasons of the Committee of Ways and Means merit attention. They say that excises are hostile to the genius of a free people. But were the members of the General Convention of that opinion when they agreed to a Constitution which conferred on the General Government the power of laying them? Or did the people believe them to be hostile to their liberties when they ratified that Constitution? At the time of that ratification were the people free, or were they slaves? The truth is, the Constitution has explicitly given authority to lay excises, and the principle is settled.

It is said that the collection of these taxes requires a great host of officers. I am not disposed at this time to discuss the question of Executive patronage. I shall dismiss it with saying the officers are public agents, not those of the President. The doctrine that they are the agents of the Executive Magistrate, and not of the public, is a new one. I am not disposed to admire a principle that makes all the public agents the obsequious instruments of an individual in power.

The Committee say that these taxes lead to a system of *espionage*. It is to be hoped that the terrors of Gallic phraseology will not awe gentlemen into a surrender of their intellectual faculties. Is this anything more than a mere imagination, or fanciful nullity? Are those who make and vend whiskey examined with the same jealous care as the merchants? The master of an American merchant vessel, importing goods from a foreign port, must have on board a manifest of the cargo. When arrived within four leagues of the coast, he may be met and boarded by one of your revenue cutters. A manifest must be exhibited, and a copy of it delivered to the officer of customs on board the cutter, who is to forward it to a custom-house. When arrived within the limits of the custom-house district, the vessel may be again boarded by an officer of the customs, when a manifest must be again exhibited and another copy must be delivered. The master must afterward make his report and entry, and exhibit a manifest at the custom-house. A distinct entry is also re-

MARCH, 1802.

Internal Taxes.

H. OF R.

quired in various instances, to be made by the merchant. The entries must be verified on oath. In addition to all these precautions, an inspector is put on board the vessel, to watch the landing of every article. Nothing is allowed to be delivered out unless in open day, except by special license. And the inspector may secure the hatches for the night, by locks and other fastenings, as he shall judge necessary.

Compare this system of regulations with that for collecting the internal duties. In point of strictness, is the last equal to the former? Will it be said that those who make and deal in whiskey are more worthy of respect and confidence than the American merchants and commanders of merchant vessels?

If your jealous regulations are odious in their application to the internal revenue, are they not ten-fold more odious in their application to the external?

There is another principle advanced by the committee that is deserving of attention. It is that the United States should derive their revenue from the duties of the customs, and leave to the particular States their revenue to be derived from internal taxes. Has it not been assured as a principle, that taxation and representation should be reciprocal?

The Constitution has provided, that representatives and direct taxes should be apportioned among the respective States according to the number of free inhabitants, and three-fifths of the black population. Why was the allowance made for these three-fifths? Was it not on the principle of making the representation conformable to internal taxation? If gentlemen considered it as the true policy of the United States to continue in peace with all the world, and if there are to be no internal taxes except in time of war, why should fourteen or fifteen representatives be ultimately allowed to certain States on account of the blacks whom they hold as property? As they extend through the interior of the country, and may assist the Government in equalizing the public burdens, and the various parts of the community, internal duties are so far analogous to direct taxes. Yet some gentlemen appear to refuse to the Government of the United States the exercise of internal taxation altogether, and yet would assure to particular States that extraordinary number of representatives which they are allowed for the number of their slaves. Gentlemen should be cautious, and not press their advantage too far. The benefits which the Constitution has given them, with respect to persons holden in servitude, may be very agreeable to them, but abuses of the power thus put into their hands may render certain provisions of the Constitution peculiarly odious to other parts of the Union.

Mr. DANA was followed by Messrs. HUGER, HASTINGS, and GRISWOLD, who made a few remarks against the passage of the bill, and by Mr. VARNUM in favor of it.

When the question was taken on the passage, and carried—yeas 61, nays 24, as follows.

YEAS—Willis Alston, John Archer, John Bacon,

Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, John Randolph, jun. John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

NAYS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Nathan Read, John Cotton Smith, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

TUESDAY, March 23.

The bill sent from the Senate, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was read twice and committed to the committee to whom were referred, on the seventh and twenty-seventh of January last, the memorial of Evan Thomas, and others, and a Message from the President of the United States on the subject of Indian affairs.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations are necessary in the several acts relative to the establishment of a marine corps, and in an act fixing the rank and pay of the commanding officer of the corps of marines, and that the committee be authorized to report by bill, or otherwise.

Ordered, That the consideration of the said motion be postponed until Thursday next.

On motion, it was

Resolved, That the President of the United States be requested to communicate to this House such information as he may have received, relative to the copper mines on the south side of Lake Superior, in pursuance of a resolution passed the sixteenth day of April, one thousand eight hundred, authorizing the appointment of an agent for that purpose.

Ordered, That Mr. GREGG and Mr. STRATTON be appointed a committee to present the foregoing resolution to the President of the United States.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for defraying the expenses which may arise from carrying into effect the Convention made between

H. OF R.

Proceedings.

MARCH, 1802.

the United States and the French Republic; and, after some time spent therein, the Committee rose and reported several amendments thereto.

The House then proceeded to consider the said amendments at the Clerk's table. Whereupon, the first amendment reported from the Committee of the whole House, to fill up the blank in the bill with the words "three hundred and eighteen thousand dollars," being twice read, was, on the question put thereupon, agreed to by the House.

The second amendment, reported from the Committee of the whole House to the said bill, being twice read, as follows: Strike out the words "first, out of the proceeds of any French prizes which have or may come into the Treasury of the United States, and which have not yet been otherwise applied; and secondly:"

The question was taken that the House do concur with the Committee of the whole House in their agreement to the said amendment, and resolved in the affirmative—yeas 52, nays 26, as follows:

YEAS—James A. Bayard, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Daniel Heister, William Helms, Joseph Hemphill, William H. Hill, William Hoge, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, Thomas Newton, jr., Joseph H. Nicholson, Joseph Pierce, Nathan Read, John Cotton Smith, John Smith, of New York, Samuel Smith, Henry Southard, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Abram Trigg, John Trigg, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, William Dickson, Lucas Elmendorf, Edwin Gray, Andrew Gregg, David Holmes, George Jackson, Charles Johnson, William Jones, John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., and Isaac Van Horne.

The other amendment, reported from the Committee of the whole House, was, on the question put thereupon, agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

WEDNESDAY, March 24.

A new member, to wit: **WALTER BOWIE**, from the State of Maryland, returned to serve in this House as a member for the said State, in the room of Richard Sprigg, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill making an appropriation for defraying the expenses which may arise from carrying into effect the Convention made between

the United States and the French Republic was read the third time and passed.

The **SPEAKER** laid before the House a letter from the Secretary of the Treasury, accompanying a letter to him from the Comptroller of the Treasury, and sundry statements, marked A, B, C, D, and E, prepared in pursuance of an act, entitled "An act establishing a Mint, and regulating the coins of the United States;" which were read, and ordered to lie on the table.

Mr. DENNIS, from the committee appointed on the ninth and seventeenth ultimo, presented a bill for opening a canal to communicate from the Potomac river to the Eastern branch thereof, through the City of Washington, which was twice read and committed to a Committee of the whole House on Friday next.

Mr. JOHN C. SMITH, from the Committee of Claims, to whom was referred, on the first instant, the memorial of Stephen Sayre, made a report; which was read and considered: Whereupon,

Resolved, That the memorialist have leave to withdraw his said memorial.

Mr. STANLEY, from the committee to whom was referred, on the nineteenth of January last, a petition of Memucan Hunt and others, addressed to the General Assembly of the State of North Carolina; and to whom were also referred sundry resolutions of the said Assembly, respecting a claim of the petitioners for the value of certain lands in the State of Tennessee, held under grants from the State of North Carolina, prior to the cession of the said lands to the United States, made a report thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

The House proceeded to the consideration of a motion, made the tenth instant, in the words following, to wit:

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the second Monday in April next.

And, the question being taken that the House do agree to the same, it was resolved in the affirmative.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to authorize the President of the United States to convey certain parcels of land therein mentioned;" and, after some time spent therein, the Committee rose and reported the bill without amendment.

The said bill was read a third time and passed.

Mr. SAMUEL SMITH, from the committee to whom was yesterday committed the bill sent from the Senate, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," reported the same to the House, without amendment: Whereupon,

Ordered That the said bill be read the third time to-morrow.

The House went into a Committee of the Whole on the bill to continue in force an act to augment the salaries of certain officers therein named.

MARCH, 1802.

Pay of Members.

H. OF R.

The Committee rose and reported the bill with an amendment, that the law should continue two years instead of three.

Ordered to lie on the table.

THURSDAY, March 25.

The bill sent from the Senate, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was read the third time and passed.

Mr. MILLEDGE, from the Committee of Elections, to whom were referred the credentials of Walter Bowie, returned to serve in this House as a member for the State of Maryland, in the room of Richard Sprigg, who has resigned his seat, made a report thereon; which was read, as follows:

"That it appears, from a certificate signed by the Governor of the State of Maryland, in Council, and under the seal of the said State, that Walter Bowie was duly elected to serve as a member of the House of Representatives of the United States, in the place of Richard Sprigg, who had resigned his seat.

"That the resignation of Richard Sprigg satisfactorily appears from his letter of the tenth of February last, addressed to the Speaker of the House of Representatives.

"Resolved, That, in the opinion of the committee, Walter Bowie is entitled to take a seat in the House, as one of the Representatives for the State of Maryland, in the room of Richard Sprigg."

Ordered, That the said report do lie on the table.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes," with several amendments; to which they desire the concurrence of this House.

On motion, it was.

Resolved, That the Secretaries of the Departments of State, Treasury, War, and Navy, respectively, be, and they are hereby, directed to lay before this House, a statement of the application of the appropriations made by Congress for clerk-hire in their respective Departments, specifying the persons, and the salaries allowed to each, for the last three years.

PAY OF MEMBERS.

Mr. BACON moved the following resolution:

Resolved, That a committee be appointed to consider whether any, and, if any, what, reduction ought to be made from the pay of the Senators and Representatives in Congress, as now established by law, and that the said committee have leave to report by bill, or otherwise.

Mr. BACON said he had always thought that, in a Government like ours, compensations to public agents ought not to be high; that in such Governments, public offices, if lucrative, will become objects of envy, and, from being objects of envy, will become objects of hatred, until, finally, the Government itself will become an object of hatred. He had reason to believe that the salaries and

compensations, heretofore allowed by the United States, had not been duly apportioned among the officers; and he considered this as applicable to the members of the Legislature. He therefore moved, in substance, that a committee be appointed to inquire whether any, and what, reduction is necessary to be made in the compensation of the members of the Senate and of the House of Representatives, as fixed by law.

Mr. DAVIS wished, if the gentleman intended to act upon a general principle, that he would extend his motion to the Clerk of the House.

The question was put upon taking up Mr. BACON's motion, and carried—yeas 49.

Mr. DAVIS moved to add to Mr. BACON's motion "and officers of the House."

Mr. ALSTON considered this amendment unnecessary, as the object was now before a committee who had maturely considered it, and were ready to report.

Amendment lost—yeas 22.

Mr. ELMENDORF entertained no doubt, when he considered the quarter from which the motion came, of its having been maturely digested. He hoped, in order that the House might learn what deduction could be made, that it would be unanimously committed.

Mr. DANA hoped the yeas and nays would be taken, that it might be seen whether the House were unanimous.

Mr. CLAIBORNE said that, as he should probably vote against the resolution, he would assign the reasons that governed him. In 1793 or 1794 he said he had offered a similar resolution. At that time he was not acquainted with the necessary expenses attending a seat in this House, being a new member. Besides, he was persuaded that the unavoidable effect of reducing the compensation so low that men of moderate property could not hold seats, would be that Congress would be filled with nabobs.

Mr. BAYARD said, he presumed the honorable gentleman from Virginia (Mr. CLAIBORNE) would scarcely accuse his friend from Massachusetts with a disposition to introduce nabobs into this House, or to exclude good democrats. Nor is this our object. But we do conceive that, when gentlemen are for tearing down every old establishment, in order to prove their patriotism, they ought to bring home to themselves the effect of these operations. Mr. B. said he did not, however, like the shape of the present motion. He believed that it was meant to import something not likely to be seen by the House. The sending that to a committee, which every member must understand, appeared to him a work of supererogation. What can that committee do? Simply collate the allowance with the expense of living. This every member can do as well for himself. The report, therefore, can furnish no new information. In order to test the sincerity of gentlemen on this subject, he would make a direct motion. Not that he thought six dollars a day too much on the old system. But the present compensation ought to be accommodated to the new plan. He therefore moved that a committee be appointed to bring

H. OF R.

Pay of Members.

MARCH, 1802.

in a bill to reduce the compensation of members from six to four dollars a day.

Mr. DAVIS moved to strike out four, and insert two dollars a day.

Mr. DANA inquired, whether it was in order to divide the question?

The SPEAKER replied in the affirmative.

Mr. DAWSON moved the postponement of the question until the last Monday in November. He stated that, in making this motion, his only wish was to prevent a waste of the public time, and not from an unwillingness to meet the question; and he took occasion to declare, that he should vote against every proposition which went to change the present pay, which he considered as not more than adequate, and to which all liberal and reasonable men would assent.

Mr. NICHOLSON hoped the postponement would not take place. He had no hesitation to say that he found six dollars not more than sufficient. But if gentlemen were ready to make sacrifices he would be as ready as any of them. He hoped, therefore, the question would be immediately taken, and that it would be seen how far gentlemen were for making sacrifices.

Mr. HUGER hoped the motion would not prevail. He had no hesitation in saying he was against all reduction. He knew that it was a popular thing to reduce salaries, and that those who make such motions may get credit abroad. Without ostentation, he might say the compensation was no object to him. If there were no compensation, he would still return to his seat, if he offered and should be elected.

He conceived the reduction in every way improper. Every gentleman must know the inconvenience of leaving home, and of neglecting a farm or a profession. Gentlemen do not consider the sacrifice that is made. A gentleman is brought here in the honorable character of a Representative of the people. He would ask, if he was not obliged to live in decent style? He believed that many able and respectable men could not afford to attend without a compensation. As far as his information extended, he believed that, in his State, many men whose talents would confer honor on their country, were prevented from coming here from the smallness of the compensation. He believed it was a great object to have fit men in office, and this end could not be attained without the allowance of decent emolument. It is a dreadful thing that you are to carry a man from his family and friends, and then grudge him the small pittance of six dollars a day. The natural effect of reducing the compensation so low, is to throw the best men out of office. Perhaps no class of citizens is more fitted for public stations than that description of citizens who can just live at home, without having anything over to spare. Can such a man come here, return home, and find himself in as good a situation as when he left it? Can it be the wish of the American people to reduce men, who serve them, to this situation? Mr. H. said, it was not his wish to see the Government managed exclusively by the rich, or by those who had no stake in the country. The effect of

this resolution will be not to put better men in office, but to abridge the field of choice. We have heard no complaints from the people respecting the present compensations. No gentleman will say this is a cheap place. Expenses here are greater than in Philadelphia. Here you are obliged to incur a considerable expense, or you must live miserably.

As to other contemplated diminutions, he was against them as well as this; he would rather disband the whole army than reduce the compensation paid to members. If reduced, what shall we gain? a mere bagatelle! As had been observed by the gentleman from Virginia, the Civil List did not constitute the great expense of the Government. Economy is a good thing, but let us be moderate and wise in our application of it. Mr. H. concluded by observing, that he should not have made so strong an opposition to the motion, if the present compensation were any object to him.

Mr. SMILIE said, he had often seen this game played in Legislative bodies; but he did not recollect that he had ever before seen it played in Congress. He had not so contracted an idea, of the American people as to believe this mode of obtaining popularity would succeed. The only way, in his opinion, to obtain popularity, was to do what was right. This had been his course; he had hitherto stood tolerably well with his constituents; and so long as he continued to pursue the same course, he had no doubt his constituents would continue to approve his general conduct.

As to any reduction whatever in the compensation of members, he would not say that it was improper, but he would say that the proposed reduction was too great. The general plan of reduction, to which gentlemen had alluded, was a different one from the present. The former was to dispense with all establishments that were useless. So far, he concurred in the plan, and deemed it correct. Whether it would be expedient to reduce the salaries of some officers, he was not prepared to say, though he was inclined to think there were some officers, among whom were some of the collectors of ports, who appeared to receive too much.

If one event take place; if we reduce the salaries of officers generally, then we ought to reduce our own. He concurred with the gentleman from South Carolina (Mr. HUGER) in the opinion that it was not proper to reduce the compensations so far, as to deprive the intermediate classes of our citizens of the power of serving their country. This was not intended by the Constitution, which even in the qualifications of a President required the possession of no property. It was, therefore, clearly intended that the people should enjoy the right of calling all classes of citizens into the public service. Suppose we were to declare, by law, that no man that was possessed of property to the amount of ten thousand dollars should be elected to a particular office, would not this be unconstitutional? Yet, may we not accomplish the same end in a different way?

Mr. S. supposed this motion was to be consid-

MARCH, 1802.

Pay of Members.

H. OF R.

ered as an electioneering business. As to himself, personally considered, it was a matter of indifference to him, whether he was here or at home. He had never considered a seat in this House as a matter of emolument; and he believed every member viewed the compensation in the same light. He would, therefore, vote both against the postponement and against the resolution.

Mr. DAWSON withdrew his motion of postponement. He had made it to save time, but as it appeared to have an opposite effect, he declined persisting in it.

Mr. BAYARD said he agreed to vary his motion so as to insert two dollars instead of four dollars.

Mr. GILES observed, that he only wished to remind gentlemen that they had yesterday passed a resolution for adjourning on the second Tuesday of April. He believed there never was a subject before Congress that required less reasoning; and if gentlemen will spare remarks not calculated to promote the dignity of the Government, they will confer a favor on the House. He was himself perfectly persuaded that the compensation of six dollars was not too high. In entertaining this opinion he was quite disinterested, as it was his purpose to be a constituent instead of a Representative, though he possibly might continue to serve in the latter character during the next Congress.

Mr. BACON said, he did not rise to enter into the debate. He rose to make himself understood. When he acted, he must act for himself, and pursue his own judgment, though he stood alone. The resolution was predicated upon plain Democratic principles; and he hoped never to be engaged in any cause that would constrain him to descend to the grovelling act of inquiring into the secret motives of men.

He had long been of opinion that, in general, the compensations have been too high in a Government like ours. He might be mistaken, but such was his opinion. If the motion he submitted was predicated upon true principles, he expected it would be popular. He was sorry the resolution had taken up five minutes' attention. But the observations made by other gentlemen had induced him to reply. He said that he acted in concert with men with whom he generally agreed, but upon the merits of a specific question, he must judge for himself. He concluded by moving the insertion of five dollars a day.

Mr. GODDARD had no doubt but that the degree of confidence the gentleman reposes in gentlemen will be reciprocated; but he could not refrain from reading a resolution passed on the fourteenth of January last.

[Here Mr. G. read an extract from the Journal, containing a resolution appointing a committee, on which Mr. BACON was named, to inquire into the expediency of making reductions in the Civil List.]

Mr. T. MORRIS said his object was to insert four dollars for each member, and six dollars for the Speaker.

Mr. ELMER felt very little anxiety respecting the fate of the motion; nor did he know that the

compensation did not stand at a just rate. But he hoped gentlemen would be actuated by the public good, and not carried away by party motives. He would rather that the compensation should be reduced to five dollars. It was certain that gentlemen in lucrative professions made great sacrifices. But it did not comport with the genius of the Government, or the habits of the people to make compensations, for public service, that were lucrative. Five dollars might answer, but two dollars were certainly inadequate.

Mr. MILLEDGE said it was clearly his opinion, that six dollars were little enough. But if gentlemen are making sacrifices, he was ready to go as far as they pleased. If they are for reducing, let them do it handsomely, and show the extent of their patriotism.

Mr. D. HEISTER moved to add, "during the present session of Congress."

Mr. S. SMITH said, he had always thought six dollars a proper allowance. But if a majority of the House should be willing to make sacrifices, he would not differ with them; he had never considered the pay as an object. He had been some time in public service, and never saved anything from his pay; he had generally found his expenses exceed his allowance. But if a majority were of opinion that one dollar was sufficient, he was willing; if for nothing, he had no objection as to himself.

Mr. BAYARD hoped it would be remembered, that the proposition to reduce the compensation to two dollars a day was not his. It was not his object to turn the business into ridicule; or with the gentleman from Maryland, to vote for two dollars, or one dollar, or no dollar, as that gentleman said he had been in the habit of serving his country. He had wished to see the compensation fixed at a moderate and reasonable sum. This had comported with his serious views. But as gentlemen were disposed to make a flagrant display of their patriotism, he was willing to go with them, and to sacrifice with them, because he thought that, while we are sacrificing others, we ought to make some sacrifices ourselves.

Mr. HOLLAND was opposed to the resolution, and to every amendment which had been offered. He believed six dollars, at the commencement of the Government, was sufficient, and much more ample than at present. The Legislature had seen fit to continue that compensation to the present day, and he believed the expenses of living were not now reduced. There was, therefore, in his mind no necessity for inquiry. He had another reason for being against the motion; and that was his wish, that our successors may be as well accommodated as we are.

Mr. S. SMITH said, he had intended to make some explanation on the misrepresentations of the gentleman from Delaware. But, on reflection, he was convinced that the House was so well able to understand the manner in which that gentleman acts, that they will be able, on this occasion, to judge, without any explanation from him.

Mr. J. C. SMITH said it must be evident to the House, that the resolution of the fourth of Janu-

H. OF R.

Salaries of Officers.

MARCH, 1802.

ary, involved the object of the present motion. To the committee then appointed, it was certainly most correct to refer this motion, though he did not know why that committee had not yet reported. He therefore moved the reference of the motion to that committee.

Mr. GRISWOLD said he had contemplated, at a future stage of the business, the instructing that committee to make this inquiry. It certainly was the correct course to refer the motion to that committee, which was under the superintendence of the gentleman from Massachusetts, (Mr. BACON.) As that committee had slept from the fourth of January, and as their nap had been a very long one, it might be time to awaken them.

Mr. BACON observed that, as he was called on as chairman of the committee alluded to, to render an account, he would state that the committee had met early and repeatedly; that they had thought it expedient to refer to the heads of departments for information. They were informed that there would be a document, in a short time, presented, that would afford them better information than any which could then be furnished. They would, notwithstanding, have progressed, but for a change in the committee; one gentleman had quitted his seat in the House, and another (the Chairman) had obtained leave of absence.

Mr. J. C. SMITH said that the mode pointed out by his colleague was the most correct. But his object, in the motion he had offered, was to preclude this useless and unpleasant discussion.

Mr. ELMENDORF thought the reference perfectly useless. As a member of that committee, he had expressed his opposition to the proposed reduction.

Mr. NICHOLSON did not know a stronger reason for that reference.

Mr. DANA declared himself in favor of a reduction. He had no hesitation to say that the compensation of six dollars was not too much. But under present circumstances, gentlemen might expect him to go full length, that they may themselves feel the force of their own acts. He was, therefore, for the reference, and to that particular committee.

The question was then taken on the motion of Mr. J. C. SMITH to refer Mr. BACON's motion to the committee appointed on the fourth of January, and carried.

SALARIES OF OFFICERS.

The bill reported from the Committee of the Whole, to continue in force an act, entitled "An act to augment the salaries of certain officers therein mentioned," was taken up.

The amendment agreed to in the Committee to limit the duration of the law to two years instead of three, was agreed to.

Mr. J. C. SMITH said that, as he was fully impressed with the propriety of the motion which he had made in Committee, he could not, notwithstanding its fate, agree to abandon it. He believed it most fair that the compensations allowed to officers should appear on the face of the bill, instead of referring to an old law. He therefore moved to strike out the words "said act be re-

vived," &c., and that the following words should be introduced, "the following salaries shall be allowed to the Secretary of State," &c.

This motion was supported by Messrs. J. C. SMITH, DANA, GRISWOLD, ELMER, HUGER, MORRIS, GODDARD, and BACON; and opposed by Messrs. GREGG, S. SMITH, NICHOLSON, VARNUM, and GILES.

Those who supported the motion contended that no analogous instance to the present bill could be found; that there was no instance in which a law had actually expired being revived, and taking effect from the period of expiration; that the law intended to be restored, had expired on the 31st of December last; and that the present law was, in fact, a new proposition, to augment the salaries of several of the heads of departments, from \$3,500 to \$5,000, &c.; that though they had no objection to continue most of the salaries at their augmented amount, there might be some of the compensations that did not bear a proper proportion to the rest; that this was actually the case with respect to the Secretary of the Navy and of War, and the Attorney General; the two former of which were not sufficiently high, and the latter, which appeared to be the most useless of all the offices, from the officer absenting himself so frequently from the seat of Government, was too high; that it would be invidious to be constrained, from the manner in which the bill was drawn, to move a distinct proviso in the case of a particular officer thus circumstanced; that many of the present members of the House were not in the Legislature when these compensations were fixed; and that they ought to have an opportunity of comparing them with each other; that though the present Secretary of the Treasury had himself voted against the increase of salary, that could be no inducement with them to vote against it; that, if it were meant, by gentlemen who brought in the bill, to conceal from the people that these salaries were augmented by the present Legislature, they would be deceived; that they would, on the other hand, gain credit by an open avowal of the fact; if this was not done; it would be said, here are gentlemen who have been declaiming against high salaries until they obtain the offices of the Government, and then they allow those high salaries, and attempt to conceal the allowance; that the late salaries, being predicated upon a state of war, might, perhaps, be too high for permanent salaries; and if so, required reduction; that, in order to determine the point, each salary should appear on the face of the bill; and this would be in conformity to the universal practice of the House, which, in all cases where a law was revived which involved a principle implicating details, had revived the law, not generally, but specifically, as to those details, thereby giving an opportunity to the members of the House to modify or vary those details.

Those who opposed the motion denied the accuracy of the precedents alluded to by the gentlemen on the other side; and contended that all similar acts to the present had been revived in a similar style; that this had been invariably and

MARCH, 1802.

Salaries of Officers.

H. OF R.

frequently the case; they professed themselves astonished at hearing it said that the present course pursued was unfair; if unfair, gentlemen had themselves set the example; an example set in every deliberative body in the world, practised in the British Parliament, and, it was believed, in every body where the parliamentary mode of transacting business was adopted; nor was it believed that it precluded any proposition of amendment: as to salaries, it was deemed correct to continue them, without alteration, as they had for several years stood, and as they had been fixed by the gentlemen who now opposed the bill. If there was any disposition to vary them, the objections of gentlemen might apply. With respect to the compensation allowed to the Attorney General, it was the same with that which had been permanently fixed; an additional compensation had been allowed him for prosecuting claims under the British Treaty, but that sum was not included in the salary allowed in the bill; that, as to the imputation attempted to be fixed, of a disposition to conceal from the people the effects of this bill, it was absurd, as the people were well acquainted with the details of the law to which this bill referred, and no misapprehension could take place, except from intentional deception.

The amendment of Mr. SMITH was lost—yeas 37, nays 46, as follows:

YEAS—John Bacon, James A. Bayard, Walter Bowie, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, William H. Hill, William Hoge, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Joseph Pierce, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillingham, George B. Upham, Isaac Van Horne, Killian K. Van Rensselaer, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, Theodorus Bailey, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmen-dorf, John Fowler, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

The question was then taken on engrossing the bill, and carried—yeas 39, nays 30.

FRIDAY, March 26.

Mr. JOHN COTTON SMITH, from the Committee of Claims, who were instructed, on the fifteenth instant, "to inquire whether any further compensation than is already provided by law, ought to be made to the Commissioners of the Direct Tax

or any of them," made a report thereon; which was read, and ordered to lie on the table.

The House proceeded to consider the amendments proposed by the Senate, to the bill, entitled "An act for the rebuilding the light-house on Gunnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to the Committee of Commerce and Manufactures.

On motion of Mr. JACKSON, it was

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency or in expediency of authorizing the Secretary of the Treasury to remit the duties, in all cases, which have accrued, or may accrue, on spirits distilled, and on stills, within the United States, upon satisfactory proof being made to the said Secretary, that such stills, or distilling materials, have been accidentally destroyed by fire, rendered useless by an inundation of water, or other unavoidable casualty; and that the said committee have leave to report thereon by bill or otherwise.

The House resolved itself into a Committee of the Whole on the bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" and, after some time spent therein, the Committee rose and reported the bill with an amendment which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

A message from the Senate, informed the House that the Senate have passed a bill, entitled "An act making appropriation for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada;" to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the whole House.

The House went into Committee of the Whole on the report of a select committee for admitting the Northwestern Territory as a State into the Union.

Without proceeding to the discussion of the report, the Committee, rose in consequence of an intimation made by Mr. HASTINGS, that Mr. FEARING, the Delegate of the Northwestern Territory, was absent from indisposition, and that it was his wish to be present when the report was discussed.

Upon motion of Mr. DAVIS, the House went into Committee of the Whole on the bill respecting the location of military land warrants.

Mr. DAVIS moved an amendment restricting the right of location to original holders of warrants; lost without a division.

Several amendments were made, affecting the details of the bill; when the Committee rose, and some of the amendments were agreed to, and the

H. OF R.

Salaries of Officers.

MARCH, 1802.

bill ordered to be engrossed for a third reading to-morrow.

Mr. S. SMITH presented a petition from the citizens of Washington, praying that such a system of internal government, or police, may be adopted, as Congress shall see fit.—Referred to the Territorial Committee.

SALARIES OF OFFICERS.

An engrossed bill to continue in force an act, entitled "An act to augment the salaries of certain officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine, was read the third time.

Mr. DAWSON.—I voted against the law of 1799, which increased the salaries of certain officers of our Government, and I propose now to vote for that bill which continues the augmentation. I will state to this House the reasons for these my votes, in a concise manner; for, sir, on this and on all occasions, I shall avoid going into arguments which do not bear on the question, and the only effect of which is a waste of our time and of the public money. I will not inquire what is the state in which a gentleman ought to live, and what are the expenses attendant thereon; I will not inquire whether all or any of our officers do live in that state. These, sir, are questions which we are not in duty bound to examine.

The duties of our public officers, and a proper compensation for services, are the only questions which it belongs to us to examine.

Sir, it must be remembered by you, and by every gentleman of this House, and especially by those who were members in 1799, what was our situation at that time; we were constantly told that we were threatened with a foreign war, and were called on to make exertions to meet the danger. Every means in our power were resorted to: armies were raised, and fleets set on float; taxes of various kinds were imposed to meet these expenses, and individuals were invited to make sacrifices; loans at eight per cent. were negotiated, and voluntary contributions were solicited. At a time like that, and under such circumstances, I did think it unjust, I did think it impolitic, to raise the salaries of any set of men; and it was for this reason, and for this chiefly, that I voted against the augmentation; for, permit me here to observe, that while I am an advocate for putting down all useless and expensive offices, my decided opinion ever has been, that we should pay well those we do retain. This, in my judgment, is right; it is just; I believe it to be politic, and I am sure it is sound republicanism.

Our situation is different now from what it was in 1799; none of the causes which I have mentioned do now exist, and it is for that reason, in part, that I shall vote now differently from what I did at that time.

There are other reasons, sir, in forming an opinion on the question now before us—the knowledge of facts which every gentleman must possess, and his own experience thereon must furnish the best data, and assist his judgment more than any observations which can be made on this

floor. Every gentleman must know what are the official duties of our public officers, and every gentleman must feel what are the expenses of living at this place, and from thence what is a proper compensation.

I believe, sir, that most gentlemen will unite with me in saying, that those who inform us that the expenses of living are less than they were in 1799; that they are less in Washington than they were in Philadelphia, are woefully mistaken; experience has taught to me the contrary, and if it has not to other gentlemen, I congratulate them thereon.

Sir, there is one consideration which has not been mentioned, which, although not conclusive, I own has some weight with me. When these gentlemen, some of them at least, came into office, these were the salaries then established; they had reason to conclude they would be continued, except there was good reasons to the contrary. None, sir, do exist; and while no attempt is made to raise salaries, according to the constant practice heretofore, while the expenses are at least equal to what they ever were, and the inconveniences of living greater, I do think it would be unjust now to diminish them.

For these reasons, I shall vote for leaving the salaries as they now are, although I voted against the increase in 1799, under the then situation of the country.

Mr. GODDARD.—I did not think of rising to-day, nor should I now rise but for the remarks made by the gentleman from Virginia. I have no necessity for making an apology to the House for any apparent inconsistency of vote on this occasion, as I have never before voted on the subject, not having had, when the bill alluded to passed, the honor of a seat on this floor. To me, however, the reasons of the honorable gentleman appear very inconclusive. He says that, in 1799, such was the situation of the country, that every citizen was called upon to make a sacrifice of his personal interests. But if the situation of the country was at that period such as called for sacrifices, was it not also such as required the incurring additional expenses and new debts; and is not our present situation such as requires a payment of the debts then contracted?

The gentleman has also observed, that those in office accepted their places under an expectation that the old salaries would be continued. Strange! Did they not know that the law fixing those salaries was limited in its duration? They cannot, therefore, with any appearance of justice, say that the good faith of the Government is pledged to continue those salaries. I apprehend, on the contrary, they had good reason to expect they would be discontinued, because these very gentlemen had declared to the nation that the expenses of the Government had been profuse; that the salaries of public officers had been too high, and they ought to have calculated that the system of economy they are for applying to others would also be extended to them.

The other reason assigned by the gentleman—the present increased expense of living—is not

MARCH, 1802.

Salaries of Officers.

H. or R.

correct. Whatever the present expenses may be, it is not probable that the expenses for the ensuing two or three years will be so great as those which succeeded the passage of the law proposed to be re-enacted. The greatest part of the European world was then at war—now there is peace; and it may rationally be expected that there will be a gradual appreciation of money, and that the price of articles of consumption and rents will fall. I do not believe that all the salaries are too high; but I do believe that some are, and that the proportion between them is not correct. For these reasons I am compelled to vote against the whole bill.

Mr. SMILIE.—The yeas and nays are called for by gentlemen, and I am glad of it. I have no diffidence to record my opinion. I am happy that, in my vote on this occasion, I shall not be obliged to depart from the principle on which I have always acted, viz: that it is beneficial to the community that the officers of Government should be supported in a reputable manner. I never deviated from this principle, either in the Legislature of Pennsylvania, or in Congress, excepting in one instance, for which I can easily account. Nor have I ever varied my vote in consequence of any particular person being in office; for I have always considered the emoluments allowed as attached to the office and not to the officer. The case to which I allude is the compensation given to the judges last year. I voted for a smaller one than that which obtained. But as I was adverse to the establishment, and thought it would soon be set aside, I do not think the vote given on that occasion a deviation from the principle.

I believe it is good policy, in a republican government, so to support your public officers, as to command the first talents in the country. Many of the officers, whose salaries are fixed in the bill, are of this character, and on whose talents depend, in a great degree, the honor of the Government. I believe salaries ought to be neither so high as to make the fortune of the officer, or so low as to disable an individual from living comfortably. This is the golden mean.

I am not a little surprised, Mr. Speaker, to see how the sentiments of gentlemen vary with circumstances. We had some time since before us a bill for reducing the compensations of certain collectors of ports. I know that, on that occasion, many members were in favor of reducing some of the compensations; but I do not recollect that any member was for reducing the compensation of those collectors who received within \$5,000. And yet now we find gentlemen opposing the same allowance to these high and respectable officers.

I believe this measure will prove perfectly agreeable to the people, and that it will be approved by their good sense. Much has been said about the expenses of living, and some gentlemen have said those expenses have not increased. But I have only to appeal to themselves to know whether the expenses of living here are not greater than in Philadelphia. For my part I have experienced

a considerable increase, and I have no reason to infer that other gentlemen have not felt the same increase.

Mr. T. MORRIS.—I shall vote against the bill, not because I object to the greater part of the salaries, but because it is so drawn as not to enable us to discriminate respecting the several salaries, being obliged to vote in lump for or against the whole of it. It is not material to me whether the gentleman from Virginia (Mr. Dawson) has acted consistently or not. Be that as it may, I must act from my own conviction. I am desirous of making a necessary and proper provision for our public officers. I would not even deny to the present Secretary of the Treasury the additional allowance of this bill, because, when on this floor, he denied it to his predecessor. To the salary of the Secretary of the Navy I would be glad to make an addition, because I believe that his duties are as laborious as those of the other Secretaries. As to the expense of living, I do not believe it is comparatively so great to the officers provided for in this bill as to us, as they make arrangements for the whole year.

Mr. ALSTON.—The very reason which will induce the gentleman last up, from New York, (Mr. T. MORRIS,) to give his vote against the passage of the bill upon the table, is the reason which induces me to give it my support and assent. For if the salary of any one of the officers which that bill contemplates the continuing in force, was to be changed or lessened, I would most assuredly vote against the whole bill. I have heard no objection, specifically made, to any one of the salaries, except that of the Attorney General, and if even an alteration had been made in his salary from what had been heretofore established by law, I should give my negative to the bill.

The uniform practice of reviving and continuing old laws in force for a longer time, ever since the establishment of the present Government, has been the very course now pursued by the Committee of Revision and Unfinished Business, who reported this bill.

I can see no reason why the present officers of Government should not receive the same compensation that had heretofore been allowed to others. I really believe that if gentlemen were to go into an investigation of the salary of every officer which it was proposed to continue in force, that they would be satisfied that a saving could not be made worth the detail of a bill, and that if the alteration which gentlemen contended for, had been made in the form of the bill, and the smallest alteration had been made in the salary of any one of the officers from that from which they had heretofore been accustomed to receive, it would have been, in my opinion, a sufficient cause to justify a rejection of the bill. I, therefore, hope the bill may be permitted to pass in its present form.

Mr. TALLMADGE.—I am against the passage of the bill, because I think the form of it improper, and because I do not believe that the reasons now exist which formerly induced the Legislature to

H. OF R.

Salaries of Officers.

MARCH, 1802.

pass the law now proposed to be revived. My first objection arises from the rejection of every amendment that has been offered. Had the amendments prevailed, I should have voted for the great outlines of the bill. I am a friend to liberal salaries; but inasmuch as we are prevented from apportioning the salaries, I am against the whole bill.

With respect to my second objection, I must remark that the old salaries were fixed on war prices; and this was the reason why the Legislature limited the duration of the old law to three years, expecting that, by the removal of the seat of Government, and the termination of the war, a reduction in the expenses of living would take place. I cannot agree that the expenses here are greater than in Philadelphia. But, provisions and labor are certainly lower here than there, and the effects of peace will make them still lower. I will not say that I shall be influenced to vote against the bill because one of the officers voted against the augmentation. Such prejudices shall have no influence with me. I have made these remarks because I am unwilling that my vote should go abroad without my reasons against the bill. If gentlemen had given us an opportunity to vary the compensation, I will not say that I would not have finally assented to the bill; and if the bill had been detailed, and a majority of the House had agreed to all its parts as it now stands, I might even then have assented to it. But under existing circumstances I cannot.

Mr. BACON.—Having, heretofore, expressed my own sentiments on the subject of salaries and compensations for public services in general, in a Government like ours, I should not have attempted to say anything further on the question had it not been from a consideration of the manner in which the resolution has been treated, which I had the honor yesterday to lay before the House. Although that resolution has been committed to a special committee, yet, from the manner in which it has been treated by gentlemen on both sides, and in all parts of the House, it seems to be apparent that there exists almost a unanimous determination not to make any reduction from our own pay.

I conceive it to be highly important, not only that legislative bodies should act, but that they should appear to act with uniformity. And in nothing is this uniformity of conduct more important than in the apportionment of compensations for services among the various descriptions of men who perform them. The appearance of partiality in the Legislature, especially in their own favor, is peculiarly odious; and in proportion as it is odious, it is hurtful to the Government.

No evidence has yet been adduced to show that the present apportionment of salaries and compensations is not equal and just. If it is not, who but former majorities were responsible for any inequalities that may exist? The present apportionment is the result of actual experiment, which is said to be the best evidence with respect to propriety of conduct in the management of human affairs.

At the commencement of the Government, the pay of the members of Congress was set the same as it now stands. The salaries of those civil officers which are named in the present bill, were then set considerably lower than what they now are. The establishment of salaries and compensations which was first made, neither was, nor could be, any other than an establishment of experiment. It was found by experience, after several years practice, that the apportionment was unequal; that the payment of the Senators and Representatives was out of proportion to that of the officers named in the bill. Our predecessors, therefore, who were then in the majority, increased the salaries of the latter, while they permitted their own pay to remain as it was first established. This, it must be presumed, was found to be in fact the case, unless we conclude that the Congress at that time established a system of favoritism, the most distant idea of which may not be indulged.

It has been, and still is, a prevailing opinion with me, that in a Government like ours, the salaries and compensations established by law are generally too high, and I sincerely wish that they might be uniformly reduced. At the same time, I cannot feel myself justified in giving my vote to reduce the compensation of others, while there appears to be no disposition to lower our own. This, in my opinion, would indicate an undue regard to our own private interest, and give occasion to our adversaries to speak reproachfully of us.

Mr. NICHOLSON.—I will state but a single fact. I have heard only one salary objected to by gentlemen as too high, viz: that of the Attorney General. They have informed the House that the annual allowance of six hundred dollars has been made that officer in consideration of services rendered under the British Treaty. It is true that sum was allowed in 1797. At that time the salary was \$2,000. In 1799, when the law, now proposed to be revived, was passed, the salary was fixed at \$3,000. The then Attorney General, and the present Attorney General, both drew from that time \$3,600. But the operations under the sixth article of the British Treaty must now cease, and of course the additional six hundred dollars must also cease; the salary will hereafter stand as fixed by the act of 1799, and there can exist no reason, in consequence of a diminution of services arising from the termination of the operations of the sixth article of the treaty, for a diminution of the fixed salary.

Mr. ELMER said, he had thought the amendment offered proper, but as it had not been carried, he would pursue a different line of conduct from that pursued by the gentleman from Connecticut. Though he might not be of opinion that there was an exact proportion preserved in the compensations made to the several officers, yet as he was satisfied with the general provisions of the bill, he would vote for it.

Mr. CLAIBORNE declared himself in favor, and Mr. HASTINGS against the passage of the bill; when the question was taken by yeas and nays, and carried—yeas 50, nays 22, as follows:

MARCH, 1802.

Salaries of Officers.

H. OF R.

YEAS—Willis Alston, John Archer, John Bacon, Theodoros Bailey, Phanuel Bishop, Walter Bowie, Robert Brown, William Butler, John Campbell, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, William H. Hill, James Holland, Benjamin Huger, William Jones, John Milledge, Samuel L. Mitchell, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, John Stanley, Joseph Stanton, jr., John Taliaferro, jr., Samuel Tenney, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Kilian K. Van Rensselaer.

NAYS—Samuel J. Cabell, Thomas T. Davis, Abiel Foster, Calvin Goddard, Seth Hastings, William Hoge, David Holmes, George Jackson, Ebenezer Mattoon, Thomas Moore, Thomas Morris, Joseph Pierce, Richard Stanford, John Stewart, John Stratton, Benjamin Tallmadge, David Thomas, Thomas Tillinghast, John Trigg, Isaac Van Horne, Benjamin Walker, and Robert Williams.

Resolved, That the title be, "An act to revive and continue in force, an act, entitled 'An act to augment the salaries of the officers therein mentioned,'" passed the second day of March, one thousand seven hundred and ninety-nine.

The said bill was then further amended at the Clerk's table; and, together with the amendments agreed to, ordered to be engrossed, and read the third time to-morrow.

SATURDAY, March 27.

An engrossed bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," was read the third time and passed.

An engrossed bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," was read the third time: Whereupon,

Ordered, That the farther consideration of the said bill be postponed until Monday next.

A memorial of sundry merchants of the town of Portsmouth, and its vicinity, in the State of New Hampshire, was presented to the House and read, praying relief in the case of depredations committed on vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, by the privateers of the French Republic, during the late European war.—Referred.

A petition of the Mayor, Recorder, Aldermen, and Common Council, of the Corporation of Georgetown, in the District of Columbia, was presented to the House and read, praying that Congress will empower the said Corporation to lay a tax on landed property within the said town, and its additions, for corporate purposes.—Referred.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making a partial ap-

propriation for the support of Government during the year one thousand eight hundred and two; which was read twice and committed to a Committee of the Whole House immediately.

The House, accordingly, went into the said committee; and, after some time spent therein, the Committee reported the bill without amendment, and it was ordered to be engrossed, and read the third time to-day.

The House went into a Committee of the Whole on the amendatory bill for the relief of Isaac Zane; and, after some time spent therein, the Committee reported the bill without amendment, and it was ordered to be engrossed, and read the third time on Monday next.

The House then resolved itself into a Committee of the Whole on the bill further to alter and establish certain post roads; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were read.

Ordered, That the said bill, with the amendments, be recommitted to Mr. SOUTHARD, Mr. ARCHER, Mr. NEW, Mr. BOUDE, Mr. BUTLER, Mr. WALKER, and Mr. LEMUEL WILLIAMS.

MONDAY, March 29.

An engrossed bill for the relief of Isaac Zane was read the third time and passed.

Mr. DAVENPORT, from the Committee of Revisal and Unfinished Business, presented a bill to regulate and fix the compensations of the officers of the Senate and House of Representatives; which was read twice and committed to a Committee of the Whole House on Wednesday next.

A Message was received from the President of the United States, transmitting a statement by the Marshal of Columbia, of the condition, unavoidably distressing, of the persons committed to his custody on civil or criminal process, and the urgency for some legislative provisions for their relief. The Message and the papers accompanying the same were read, and ordered to be referred to the committee appointed on the eighth of December last, "to inquire whether any, and, if any, what alterations or amendments may be necessary in the existing government and laws of the District of Columbia."

The House proceeded to consider, at the Clerk's table, the report of the committee of the fourteenth of December last, on the petition of James M'Cashen and others, referred on the eighth of the same month: Whereupon,

Resolved, That those persons who purchased lands of John Cleves Symmes, prior to the first of January, one thousand eight hundred, ought to have further time allowed them to pay the money, than is allowed by the act of Congress, of the third of March, one thousand eight hundred and one.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. DAVIS, Mr. HOGG, and Mr. FEARING, do prepare and bring in the same.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act for the better security of public money and

H. OF R.

District of Columbia—Drawbacks.

MARCH, 1802.

property in the hands of public officers and agents;" to which they desire the concurrence of this House.

An engrossed bill, making a partial appropriation for the support of Government, during the year 1802, was read the third time and passed.

Previous to its passage, conversation took place respecting an alleged looseness of appropriation. This objection was made by Mr. GRISWOLD, and supported by Mr. DANA, who were of opinion that the sum in the bill should be more specifically appropriated.

The objection was repelled by Messrs. MILLEDGE, GILES, ELMENDORF, RANDOLPH, and ALSTON, who contended that the objection did not apply, and that no inconvenience could arise from a partial appropriation made in the bill and contemplated for a definitive object.

A motion made to recommit the bill was lost; when the bill passed—years 45.

DISTRICT OF COLUMBIA.

The order of the day was called for on the bill respecting the government for the District of Columbia.

Mr. T. MORRIS moved to postpone the consideration of the bill till the 4th Monday of November next.

Mr. MORRIS made this motion from a conviction that the provisions of the bill were disagreeable to a great majority of the inhabitants. From this circumstance it had been his opinion that the bill would have been suffered to sleep.

Mr. NICHOLSON seconded the motion.

Mr. BACON asked gentlemen to assign some specific reasons for the motion.

Mr. NICHOLSON said his specific reason for a postponement was his dislike to the system laid down in the bill. He believed that system, if established, would prove very oppressive, from the great expense attending it. Another reason with him was that the inhabitants of the District are very generally averse to it. Should the House go into a Committee, he had no doubt, but that after consuming days, the bill would be finally rejected. The question of postponement would determine the sense of the House respecting a Territorial Legislature.

Mr. DENNIS said he had early taken up the opinion, that it would be as well for the interest of the United States as for that of the District, to establish a system of local authority. But as no person could be more opposed to the provisions of the bill than he was, and finding almost the whole of the inhabitants against it, he should vote for the postponement; though the principle which the House was in favor of adopting might perhaps be best settled by a motion to strike out the first section of the bill. Should the House take up the bill, he was prepared to move a number of amendments, one of which would be for incorporating a Senatorial branch. Believing that the present bill would be rejected, and that it was necessary for Congress immediately to do something in relation to the affairs of the territory, he would vote in favor of the motion.

The question of postponement was put and carried—years 42.

When on motion of Mr. DENNIS, the Committee of the Whole was discharged from the further consideration of the several subjects connected with the Territory, and reference made thereof to a select committee.

DRAWBACKS.

The House proceeded to the further consideration of an engrossed bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" which was read the third time on Saturday last: Whereupon, a motion was made, and the question being put, that the said bill be recommitted to the Committee of Commerce and Manufactures, it passed in the negative.

And then the main question being taken, that the same do pass, it was resolved in the affirmative, yeas 38, nays 32, as follows:

YAYS—Willis Alston, John Archer, John Bacon, Theodoras Bailey, Robert Brown, William Butler, John Campbell, Thomas Claiborne, John Clopton, John Condit, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Andrew Gregg, John A. Hanna, Daniel Heister, David Holmes, William Jones, John Milledge, Samuel L. Mitchell, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, John Smilie, John Smith, of New York, John Smith, of Virginia, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

NAYS—Phanuel Bishop, Thomas Boude, Matthew Clay, Manasseh Cutler, John Davenport, Thomas T. Davis, Ebenezer Elmer, Calvin Goddard, Edwin Gray, Roger Griswold, William Helms, William H. Hill, William Hoge, Benjamin Huger, George Jackson, Charles Johnson, Lewis R. Morris, Thomas Morris, Nathan Read, John Cotton Smith, Josiah Smith, Henry Southard, John Stanley, Joseph Stanton, Joseph Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Killian K. Van Rensselaer, Benjamin Walker, and Henry Woods.

TUESDAY, March 30.

A petition of sundry members of the Roman Catholic Church, residing in the city of Washington, was presented to the House and read, praying that Congress will grant them the privilege of raising by the means of one or more lotteries, a sufficient sum of money to build and endow a church in the said city, for the accommodation and benefit of the petitioners, and of the religious society to which they are attached.—Referred.

Mr. EUSTIS, from the Committee of Commerce and Manufactures, to whom were referred, on the twenty-sixth instant, the bill, entitled "An act for the rebuilding the light house on Gurnet Point, at the entrance of Plymouth harbor: for rebuilding the light-house at the eastern end of New Castle Island; for erecting a light house on Lynde's Point, and for other purposes," and the amendments proposed by the Senate thereto, made a report there

MARCH, 1802.

Northwestern Territory.

H. OF R.

on; which was read, and together with the said amendments of the Senate, ordered to be committed to a Committee of the whole House to-morrow.

A Message was received from the President of the United States, transmitting an estimate of expenditures for the Army of the United States, during the year one thousand eight hundred and two. The Message and papers transmitted therewith were read, and ordered to be referred to the Committee of Ways and Means.

The bill sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," was read twice and committed to a Committee of the whole House on Monday next.

On a motion made and seconded that the House do come to the following resolution :

Resolved, That, in case of the death of a member of the House of Representatives at the seat of Government, while Congress is in session, the expenses accruing, in conformity to an order of the House, made to testify their respect for the deceased member, shall be paid out of the contingent funds of the House, and not out of his wages for travelling home, as is now allowed by law :

Ordered, That the said motion be referred to Mr. DAVIS, Mr. LEWIS R. MORRIS, and Mr. NICHOLSON, to consider and report thereon to the House.

The SPEAKER laid before the House a letter from the Secretary of State, enclosing a statement of the application of the appropriations made by Congress for clerk hire in his Department, specifying the names of the persons, and the salaries allowed to each, for the years one thousand seven hundred and ninety-nine, one thousand eight hundred, and one thousand eight hundred and one, in pursuance of a resolution of this House of the twenty-fifth instant; which were read, and ordered to lie on the table.

NORTHWESTERN TERRITORY.

The House then went into a Committee of the Whole, on the resolutions of a select committee, respecting the admission of the Northwestern Territory, as a State, into the Union.

[As the report of the select committee is necessary to elucidate the several points raised in the discussion, it is presented entire, as follows :

That it appears to your committee, that the ordinance of the 13th of July, 1787, between the original States and the people and States within the Territory Northwest of the river Ohio, contains the following stipulation, that : "Whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its Delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided the constitution and government, so to be formed, shall be Republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in any State than sixty thousand." It also appears from the census of the in-

habitants within the Eastern division of the said Territory, taken more than twelve months since, in virtue of a law of the United States for that purpose, that there were then in the said Eastern division, 45,365 inhabitants, from which are to be deducted 3,400 inhabitants living north and west of the line proposed for the boundary of the said Eastern division.

It appears that, since the time of taking the census, the United States have sold 553,995 acres of land within the Eastern division of the Territory, amounting in value to \$1,147,585. It also appears from the best information to be procured, that, in the year 1794, the number of inhabitants within the present Northern division of the Territory, did not exceed six thousand. From the progressive increase of population since that period, and the sale of lands recently made by the United States, it is probable that, before all the measures necessary for the formation of a constitution, putting into operation a State government, and its admission into the Union, can be effectuated, the number of inhabitants will amount to sixty thousand, the number requisite, according to the terms of the ordinance, for giving them an absolute right of forming a constitution and State government for themselves, as well as the absolute right of admission into the Union, upon the same footing with the original States in all respects whatever.

It also appears to your committee, that great and increasing disquietudes exist among the inhabitants within the Territory from various occasions, and particularly in consequence of the act lately passed for altering the boundary lines of the States in the Territory, as established by the ordinance of the 13th of July, 1787.

Your committee, from a due consideration of all the foregoing circumstances, are of opinion that it is at this time expedient to make provision for enabling the people within the Eastern division of the Territory Northwest of the river Ohio, to form for themselves a constitution and State government, to be admitted into the Union upon the same footing with the original States in all respects whatever, and that such admission, at this time, is consistent with the general interests of the Confederacy, according to the said ordinance, although the number of inhabitants may not amount to sixty thousand. The committee, therefore, recommend the following resolutions :

1st. *Resolved*, That provision ought, at this time, to be made by law, for enabling the inhabitants of the Eastern division of the Territory Northwest of the river Ohio to form for themselves a constitution and State government, provided the same be republican, and not repugnant to the ordinance for the government of the Territory Northwest of the river Ohio, of the 13th of July, 1787, nor repugnant to the Constitution of the United States; and also for the admission of such State, when the government thereof shall be formed, into the Union, upon the same footing with the original States in all respects whatever, by the name of the State of —.

2d. *Resolved*, That the said State of —, ought to consist of all the territory included within the following boundaries, to wit: Bounded on the east by the Pennsylvania line, running from the territorial line in Lake Erie to the Ohio; on the south by the Ohio to the mouth of the Great Miami; on the west by a line drawn due north from the mouth of the Great Miami aforesaid; and on the north by an east and west line, drawn through the southerly extreme of Lake Michigan, running east, after intersecting the due north line aforesaid from the

H. OF R.

Northwestern Territory.

MARCH, 1802.

mouth of the Great Miami, until it shall intersect Lake Erie or the territorial line, and thence with the same through lake Erie to the Pennsylvania line aforesaid, or place of beginning; provided that Congress shall, at any time hereafter, be at liberty either to attach all the territory lying east of the line, to be drawn due north from the mouth of the Miami aforesaid, to the territorial line, and north of an east and west line drawn through the southerly extreme of Lake Michigan, running east as aforesaid to Lake Erie to the aforesaid State, or dispose of it otherwise, in conformity to the fifth article of the compact between the original States, and the people and States to be formed in the Territory Northwest of the Ohio.

3d. *Resolved*, That provision ought to be made by law for calling a Convention within the Eastern division of the Territory, to be composed of members to be apportioned among the several counties therein, in a ratio of one Representative for every — inhabitants of the said counties, according to the last enumeration of inhabitants thereof; also, for fixing the time, place, and mode of making elections of members to compose such Convention, and the time and place for the meeting of the same; which Convention, when met, shall first determine by a majority of the members present, provided the number present shall be a majority of the whole number chosen, whether it be or be not expedient at that time, to form a constitution and State government for the people within the said Territory, and if it be determined to be expedient, then, in the next place, the Convention shall be authorized to form a constitution and State government, provided the same shall be Republican, and not repugnant to the ordinance of the 13th of July, 1787, between the original States and the people and States of the Territory Northwest of the river Ohio, nor repugnant to the Constitution of the United States.

4th. *Resolved*, That, until the next general census shall be taken, the State of — shall be entitled to — Representatives in the House of Representatives of the United States.

The committee observe, in the ordinance for ascertaining the mode of disposing of lands in the Western Territory of the 20th of May, 1785, the following section, which, so far as respects the subject of schools, remains unaltered :

"There shall be reserved for the United States; out of every township, the four lots, being numbered 6, 11, 26, 29; and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon, for future sale. There shall be reserved lot No. 16, of every township, for the maintenance of public schools within the said township; also, one-third part of all gold, silver, lead, and copper mines, to be sold, or otherwise disposed as Congress shall hereafter direct."

The committee also observe, in the third and fourth articles of the ordinance of the 13th of July, 1787, the following stipulations, to wit :

"Art. 3d. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged," &c.

"Art. 4th. The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the

property of the United States; and in no case shall non-resident proprietors be taxed higher than residents."

The committee, taking into consideration these stipulations, viewing the lands of the United States within the said Territory as an important source of revenue; deeming it also of the highest importance to the stability and permanence of the union of the eastern and western parts of the United States, that the intercourse should, as far as possible, be facilitated; and their interests be liberally and mutually consulted and promoted; are of opinion, that the provisions of the aforesaid articles may be varied for the reciprocal advantage of the United States, and the State of — when formed, and the people thereof; they have, therefore, deemed it proper, in lieu of the said provisions, to offer the following propositions to the Convention of the Eastern State of the said Territory, when formed, for their free acceptance or rejection, without any condition or restraint whatever; which, if accepted by the Convention, shall be obligatory upon the United States :

1st. That the section No. 16, in every township sold, or directed to be sold by the United States, shall be granted to the inhabitants of such townships, for the use of schools.

2d. That the six-miles reservation, including the salt springs, commonly called Scioto salt springs, shall be granted to the State of — when formed, for the use of the people thereof; the same to be used under such terms, conditions, and regulations, as the Legislature of the said State shall direct, provided the said Legislature shall never sell, nor lease the same for a longer term than — years.

3d. That one-tenth part of the net proceeds of the lands lying in the said State, hereafter sold by Congress, after deducting all expenses incident to the same, shall be applied to the laying out and making turnpike or other roads leading from the navigable waters emptying into the Atlantic, to the Ohio, and continued afterwards through the State of —, such roads to be laid out under the authority of Congress with the consent of the several States through which the road shall pass, provided that the Convention of the State of — shall, on its part, assent, that every and each tract of land sold by Congress, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of ten years, from and after the completion of the payment of the purchase money on such tract, to the United States.

CITY OF WASHINGTON, Feb. 13, 1802.

SIR: I have examined, in consequence of our conversation, the articles of compact which make part of the Territorial ordinance. The more I have reflected on the subject, the more fervently have I been impressed with the importance of making some effectual provisions which may secure to the United States the proceeds of the sales of the Western lands, so far at least as the same may be necessary to discharge the public debt, for which they are solemnly pledged.

That part of the system of taxation, adopted in the Northwestern Territory, which relates to non-resident owners, undoubtedly affects the value of the public lands, and will eventually diminish the amount of sales. Yet, upon due consideration, there is but one provision, which, in my opinion, would be inconsistent with the rights of the United States, as secured by the articles of compact. An attempt, on the part of the Legisla-

MARCH, 1802.

Northwestern Territory

H. of R.

ture of the Territory or new State, to render lands, sold under the laws of Congress, but for which no patent has yet issued, liable to be sold for non-payment of taxes, would interfere with the regulations adopted by Congress for the "primary disposal of the soil," since, by these, the lands remain mortgaged to the United States, until after complete payment of the purchase money, and, in case of failure thereof, are directed to be sold.

But it does not appear to me that the United States have a right to annex new conditions, not implied in the articles of compact, limiting the Legislative right of taxation of the Territory or new State. The limitations, which they may rightfully impose, are designated by the articles themselves, and these being unalterable unless by common consent, all Legislative powers, which of right pertain to an independent State, must be exercised at the discretion of the Legislature of the new State, unless limited either by the articles or by the Constitution of the United States or of the State. Indeed the United States have no greater right to annex new limitations than the individual State may have to infringe those of the original compact; and I cannot see that this position is in any degree altered by the circumstance of admitting into the Union, in pursuance of an express provision of the articles, a State at an earlier period than that at which it must necessarily be admitted.

The conditions inserted in the fourth article of the compact in relation to that object, and which constitute all that Congress thought at the time necessary to reserve in order to secure to the Union their right to the soil, are: 1st, that the Legislatures of the districts or new States shall never interfere with the primary disposal of the soil by Congress, nor with regulations which Congress may find necessary for securing the title in such soil to the bona fide purchasers; 2d, that no tax shall be imposed on lands the property of the United States; and 3d, that in no case shall non-resident proprietors be taxed higher than residents. Farther than that Congress cannot demand; and it is on account of the second provision that the district or State Legislature has not a right to tax, or, at least to sell, for non-payment of taxes, the lands on which, although conditionally sold, the United States still retain a lien.

It follows that, if it be in a high degree, as I believe it is, the interest of the United States to obtain some further security against an injurious sale, under the Territorial or State laws, of lands sold by them to individuals; justice not less than policy requires that it should be obtained by common consent. And as it is not to be expected that the new State Legislature should assent to any alterations in their system of taxation which may affect the revenue of the State unless an equivalent is offered which it may be their interest to accept, I would submit the propriety of inserting in the act of admission a clause or clauses to that effect, leaving it altogether optional in the State Convention or Legislature, to accept or reject the same.

The equivalent to be offered must be such as shall not affect the value of the pledge which the public creditors now have by the appropriation of the lands, and as shall be fully acceptable to the State, and, at the same time, prove generally beneficial either in a political or commercial view to the Union at large. From the best view I have been able to take of the subject, the following provisions appear to me fully adequate to answer those several objects, namely:

That, provided that the Convention or Legislature of the State shall assent, that every and each tract of land sold by Congress shall be and remain exempt from any tax raised by or under the authority of the State, whether for State, county, township, or any other purpose, for the term of ten years, from and after the completion of the payment of the purchase money on such tract to the United States, the United States shall on their part agree:

1st. That the section No. 16 in every township sold or directed to be sold by the United States shall be granted to the inhabitants of such township for the use of schools.

2d. That the six-miles reservation, including the salt springs, commonly called the "Scioto salt springs," shall be granted to the new State for the use of the people thereof, the same to be used under such terms, conditions, and regulations as the Legislature of the said State shall direct, provided that the said Legislature shall never sell nor lease the same for a longer time than — years.

3d. That one-tenth part of the net proceeds of the lands lying in said State, hereafter sold by Congress, after deducting all expenses incident to the same, shall be applied towards laying out and making turnpike or other roads, leading from the navigable waters emptying into the Atlantic to the Ohio, and continued afterwards through the new State; such roads to be laid out under the authority of Congress, with the consent of the several States through which the same shall pass.

That such conditions, instead of diminishing, would greatly increase the value of the lands, and therefore of the pledge to the public creditors, and that they would be highly beneficial and acceptable to the people of the new State, cannot be doubted. And they are particularly recommended, as among the most eligible which may be suggested, from the following considerations.

The provision for schools, exclusively of its intrinsic usefulness, made a part of the former ordinance of Congress for the sale of lands; the grant has actually been made in the sale to the Ohio company, and to John C. Symmes; and, although the ordinance be no longer in force, and such a grant be no part of the articles of compact, yet it has always been at least hoped by the inhabitants of the Territory that it would be generally extended.

The grant of the Scioto salt springs, will at present be considered as the most valuable, and alone would, most probably, induce a compliance, on the part of the new State, with the condition proposed by Congress. And if it is considered that at least one-half of the future population of that district will draw their salt from that source, the propriety of preventing the monopoly of that article, falling into the hands of any private individual, can hardly be disputed.

The tenth part of the proceeds of the lands, as it will be coextensive with the sales, will continue to be considered as an equivalent until the sales are completed, and after the present grant might have ceased to operate on the minds of the people of the new State. The roads will be as beneficial to the parts of the Atlantic States, through which they are to pass, and nearly as much to a considerable portion of the Union, as to the Northwestern Territory itself. But a due attention to the particular geographical situation of that Territory and of the adjacent Western districts of the Atlantic States, will not fail to impress you strongly with the importance of that provision, in a political point of view, so far as it will contribute toward cementing the

H. OF R.

Northwestern Territory.

MARCH, 1802.

bonds of union between those parts of the United States, whose local interests have been considered as most dissimilar.

I have the honor to be, with sincere respect, your obedient servant,

ALBERT GALLATIN.

Hon. Mr. GILES, *Chairman, &c.*

The first resolution being under consideration, Mr. FEARING said he should oppose this resolution, but not on the ground of expediency. As the business had been urged forward hastily, he had not had an opportunity of consulting his constituents, to many of whom he had forwarded the report of the select committee on its being presented. He would, therefore, waive any remarks on the expediency of it until a bill was brought in, in the event of the resolution being agreed to, in the mean time expecting to hear from his constituents. But he was opposed to the resolution on Constitutional principles. He conceived Congress had nothing to do with the arrangements for calling a Convention. It was neither necessary, on general principles, nor under the compact, that the Territory, in order to be admitted into the Union, should form a constitution. By the compact, Congress can give their assent to admit the Territory into the Union before the population amounts to sixty thousand. Their power extends no further. The compact is the supreme law of the land, and is in the nature of a treaty. What it prescribes must be executed; but as to arrangements not made in it, they may or may not be made, and they may be made either by law, or by a constitution, as the Territory may see fit. Can Congress exercise powers given exclusively to the people? He conceived it would be as great an encroachment upon their rights to say they shall meet together in Convention and form a constitution, as it would be to say so to any State in the Union.

Gentlemen may say that this power is given to Congress by the consent of the people. The printed documents accompanying the report, if they mean anything, mean to express the opinion of the people. Among these is the letter of Samuel Findley to T. Worthington. [Mr. F. here quoted the concluding part of the letter.] Now, if this committee at Chillicothe speaks the voice of the Western Territory, the Congress have the right contended for; but this the citizens of other towns and counties will not admit. What example will the adoption of this measure hold out to the people of the Territory? If Congress violate the compact, will not the people of that Territory have an equal right to violate it? He hoped, for these reasons, that Congress would, on their part, preserve it inviolate.

Mr. DAVIS said he was as unwilling as any member on that floor, or as the Delegate from the Territory, to violate the compact; nor did he believe Congress would violate it by adopting the resolutions before them. Surely, to allow to the people of the Territory the liberty to become a State could not be considered as a violation of it. The honorable gentleman says, the Territory may come into the Union with or without a constitu-

tion, and yet the ordinance reads that "they shall be at liberty to form a constitution, provided it be republican." It says, therefore, they shall form a constitution on no other ground but its being republican.

When the population of the Territory amounts to sixty thousand, "it shall be admitted into the Union." This obligation is as binding upon Congress to admit, as upon the Territory to be admitted into the Union. Suppose, then, when the Territory shall have reached a population of sixty thousand, it should not consent to become a State. Can it be doubted whether Congress will have power, notwithstanding, to admit them?

But the ordinance says: "Congress shall have power to admit them before their numbers amount to sixty thousand." Before the existence of a certain population, there can be no territorial Legislature. But, suppose Congress thought fit, before those numbers were attained, to admit them, they having by the compact the undisputed right to do so? Thus it appears they could admit them when there was no Legislature in the Territory, to give its assent, which demonstrates that the assent of the Legislature is not necessary.

We are not, however, for doing anything compulsory. We only propose doing that, which, unless confirmed by the people of the Territory, will amount to nothing. Congress can only prescribe terms by which itself will be governed; nor can I see that the privilege of admission into the Union can infringe in the least the rights of the Territory. I am in favor of admitting the Territory into the Union for the reasons detailed in the report, and particularly from the general dissatisfaction which prevails under their present form of Government. We all know the great dissatisfaction that has existed in all the territorial governments, and I believe that a very great dissatisfaction exists in this Territory.

Mr. GRISWOLD.—This is not the first project started this session that goes to a consolidation and destruction of all the States. That this will be the effect of the present measure cannot, I think, be denied. What is the condition of the people of the Territory? They are not, it is true, as to every purpose of government, a State. But they have a complete Legislature, as fully competent to legislate as the Legislature of Maryland, or any other Legislature in the Union. They are fully competent to the making of all laws to regulate the internal concerns of the government. Now these resolutions go to interfere with these internal concerns, and to regulate them by a national law. When the gentleman from Kentucky (Mr. DAVIS) undertakes to decide the terms on which the members of the Convention shall be chosen, I ask him where is the power? Are not the powers of the Territorial Legislature as full as those of the Legislature of Maryland; and have not we as good a right to interfere with the State concerns of Maryland as to interfere with the concerns of the Territory? I call, then, upon gentlemen to say, whether they are willing to sanction a principle that goes to the length of consolidation of these States? We have the de-

MARCH, 1802.

Northwestern Territory.

H. of R.

termination of the territorial Legislature that it is not desirous of forming a Constitution at this time. If, then, we go abreast of the determination of one Legislature, why not of another? If we go abreast of that of the Northwestern Territory, why not go abreast of that of Maryland? If, too, you may legislate for these people before they are admitted into the Union, you may also legislate for them afterwards; and if you do not like the constitution they now form, you may pass a law for another Convention. By a parity of reasoning you may force down a constitution on Connecticut, and say that as that State has no written constitution, you will give her one. Acting under such a principle, there can be no stopping, you may go any length. If you interfere with the authority vested in others, you may proceed any length, and that consolidation of the States, which some gentlemen wish to see effected, will be accomplished. I am, therefore, on Constitutional ground, opposed to these resolutions. I do not inquire into the expediency of the measure. Let the people judge of this. If they wish a constitution, I have no objection; but I would not impose upon them what the compact does not warrant, nor would I impose arbitrary power any more upon them than upon any of the States.

The report says:

"Resolved, That provision ought to be made by law for calling a Convention within the Eastern division of the Territory, to be composed of members to be apportioned among the several counties therein, in a ratio of one Representative for every — inhabitants of the said counties, according to the last enumeration of inhabitants thereof," &c.

I understand the project is to portion out the people into districts to choose members of Convention; and I say, as you have not the power, it is arbitrary and unjust.

Mr. NICHOLSON.—I am surprised at the ground taken by the gentleman from Connecticut. I never doubted the authority of Congress to admit new States into the Union, as the Constitution expressly declares that new States may be admitted. That gentleman says, this measure tends to a consolidation of the State governments. I do not know what idea he entertains of consolidation, nor do I know to whom he alludes, when he says a consolidation of the States is the wish of certain members of this House. I can only say, that I have heard gentlemen on this floor express their universal abhorrence of this event, because they knew that, if the States are destroyed, we shall have a consolidated instead of a confederated Government.

The gentleman says that, if we pass these resolutions and authorize the people of the Territory to form a government for themselves and come into the Union, we might as well say the same thing to the people of Maryland. Was there ever a more absurd doctrine that States, acknowledged to be sovereign and independent, should be compared to a Territory dependant upon the General Government? I ask if Maryland can be compared to the Territory? Have both similar pow-

ers? What power has Maryland? The power of altering her form of government whenever she sees fit, so that she does not change it for an anti-republican form of government. Have the people of the Territory the same right? No; because the Governor and Legislative Council are appointed by the President, and have the power of preventing the passage of all laws. Hence the powers are different, and essentially dissimilar. Congress have passed an ordinance, which is in some measure the constitution of the Territory, and from which they cannot deviate.

The gentleman from Connecticut calls these resolutions an interference with the Legislative rights of the Territory, and asks, if the Territory has not as complete Legislative rights as any of the other States? I answer that, in some respects they have, and in other respects they have not. They have not the right of saying how their Governor shall be elected, or their judges appointed, as in Maryland; the Governor and judges are, in fact, prescribed them by the United States.

If these resolutions are passed, they do not interfere with the rights of the citizens of the Territory; they do not say they shall come into the Union, or that they shall form a constitution; they only lead to the passage of a law enabling them to do that which, it is allowed on all hands, they have themselves a right at present to do.

The gentleman says, we ought to wait for the approbation of the Legislature. But if the government of the Territory were to remain organized as at this time, I believe we might wait till doomsday, before we obtained their approbation. Have we not seen a law passed by that Legislature, not for bettering the condition of the people, but for dividing them in such a manner as to protract their admission into the Union, and thus enabling the present Governor and judges to hold their offices after the Territory, from its population, ought to become a State? I ask if, under these circumstances, it is to be expected that the Governor and Legislative Council would consent to the application of the petitioners? The thing is impossible. And it will appear that they have taken every step in their power to prevent the people from enjoying the rights of citizens as attached to a State. By subdividing the Territory, they have reduced their numbers so low that there is not a probability that they would come into the Union for ten years to come. And yet we are told the people ought to wait until the government of the Territory applies for admission into the Union. The Governor and Legislative Council are not chosen by the people, who may therefore earnestly desire an admission, as long as they please, without the power to obtain it. This scheme, in fact, puts everything in the power of the President of the United States.

The people, to the number of several thousands, have expressed a wish to be admitted into the Union. Who makes objection? It is merely made by the Delegate from the Territory, who tells you he has no instructions, and yet he is the only man in the whole Territory that opposes the

H. OF R.

Northwestern Territory.

MARCH, 1802.

wishes of the whole people of the Territory. If we are not to attend to the voice of the people, and are to wait for Legislative interposition, we may wait until the present Governor's time expires, and, until the President shall choose a better man; by better man, I mean no other allusion than to the fact that the present Governor has declared that it is not his wish that the Territory should be admitted into the Union. Thus you would put it in the power of the President to keep this district under a Territorial government as long as he pleases. We ought not, then, to run the chance of the President's appointing a particular man to the office of Governor; but at once to regard and conform to the reasonable wishes of the people of the Territory.

I repeat it, that, in these resolutions, there is nothing compulsory. If the people of the Territory do not think proper to form a State government there is no compulsion to do it.

Mr. R. WILLIAMS said, he had hoped the gentleman from the Territory, when he was up, would have given some information to the Committee, in answer to the inquiry made by the member from Pennsylvania (Mr. GREGG) as to the petitions on this subject. But he had thought proper to avoid it, for what purpose he knew not, unless from a conviction that their objects and numbers would militate against his wishes; this, he presumed, was the true reason, which forbid a compliance. He said he had, in haste, attempted a selection of those petitions, but really found them so numerous as to render it perhaps improper to attempt to detail them to the Committee at this time. He would only state that, since Congress had rejected the law passed by the territorial Legislature for dividing it, more than twenty petitions had come on, signed by thousands of the inhabitants, and many by select men chosen for the express purpose by the people, and these, too, from almost every county in the Territory, praying for a State government, and stating their grievances in the most respectful terms. He said there were also a much greater number against the law which he had just mentioned, which also had the same object in view, that of a State government; as it was known the effects of this law and its objects were to prevent a State government, by cutting them into small sections and dividing the population, so that their numbers in no part should be sufficient to entitle them to a State government.

Mr. W. said, from every information he could obtain, he had no doubt but that nine-tenths of those people were in favor and wished a State government. Nay, there was not a solitary petitioner to the contrary, except the member from the Territory, notwithstanding his great desire to defeat this measure, by opposing the will of the people whom he ought to represent on this floor. The gentleman from Connecticut (Mr. GRISWOLD) has started a Constitutional objection to this resolution, to enforce which he had supposed it to be intended for one of the States now in the Union, and asking, whether Congress have the right to direct the State of Maryland to call a Convention, &c. ? No. Mr. W. said, he could see no analo-

gy between the case put by him, and the present one before the Committee. The State of Maryland was an independent State, and was so before the formation of the Federal Government, and had her constitution independently of the General Government, which she as well as every other State, has a right to alter at discretion, and many of which have done so, since the present Government. But what is the situation of this Territory? Here is a tract of country belonging to the United States, which they wish to settle; they form for the people who shall go there, a temporary government, and at the same time, agree that, whenever this tract of country shall have a certain number of inhabitants, to wit: sixty thousand, it shall be admitted into the Union; and, if consistent with the general interest, such admission may be sooner, and when there may be a less number of inhabitants than sixty thousand.

It is to be observed that the term of admission is two-fold; first, when they have the number sixty thousand, the right of admission is absolute; in the second, when they have not the numbers, it is discretionary with Congress; but this discretion, he presumed, ought to depend on the expediency and policy of the measure; but, surely, gentlemen will not contend there is any Constitutional impediment in the way, if gentlemen will attend to the ordinance, and the Constitution giving the right to Congress to form and lay out new States.

The same gentleman (Mr. G.) has stated, as a further objection, that this application for admission into the Union, does not come through a proper channel, by which we are to know the public will, and says it ought to have come through the Legislature of the Territory; that this is the source from which we are to look for an expression of the public will; and again refers to what ought to be an application from any of the States.

Mr. W. said, although he admitted it was not common for that gentleman and himself to agree, as to what ought to be an expression of the public will, yet, on the present occasion, for argument sake, he would agree to the case stated, that we should regard the act of the Legislature of any of the States as expressive of the will of the people in such State, and still it does not bear on the present case. In all the States, said he, the people have a government of their own choice, which themselves have formed; they are represented by those of their own appointment, and who are responsible to the people at short and stated periods by elections; hence we may infer that, in their public acts, the interest as well as opinions of the people are consulted. But, how is it as to this Territory? Have the people a government of their own choice? Are not two branches of the Legislature, the Governor and Council, appointed by the President of the United States, independent of the people, and under no kind of responsibility to them? Even the salary which the Governor receives is paid by the United States. The Representatives are chosen by the people, but by a very limited suffrage in-

MARCH, 1802.

Northwestern Territory.

H. OF R.

deed; and the Governor, it is to be observed, has an unqualified negative on all the acts of the Legislature, with a power to dissolve, and prorogue them, &c.

Mr. W. said, this being the situation of those people as to a government, he would venture to say that, if Congress disregarded the direct application of the people for a State government, and wait for a Legislative application, that it never would be made; for it is not to be supposed that those men who have the power to nullify every act of the people, through their Legislature, will ever sanction one which is calculated to put an end to their political existence. Nay, said Mr. W., have we not had, before the present session, a memorial, for example, which proves what those men would do had they the power? Did they not pass a law, which this Congress almost unanimously rejected, in palpable violation of their constitution (the ordinance) and which was intended solely to prevent the people from obtaining a State government, by dividing the population in such manner as that their numbers would not entitle them to a government? When, said he, men will so far disregard their oaths and the interest of the people, as to do acts of this kind, what may we not expect them to do, in order to promote their own private views? Thus, he said, we might fairly conclude, that neither from the nature nor practice of this Government, was an expression of the public will to be expected through its Legislature, but the reverse. But, it is asked, why force these people into a State government? This is not a fact, as relates to the petitioning of the people, or the report of the Committee; if gentlemen will attend to the report, they will find it is left optional with those people, when in Convention, to say whether they will go into a State Convention, or not. Where is the impropriety? It only gives them a fair opportunity of exercising those rights, which belong to every people, and which it seems strange any should be disposed to deny them. It also will afford a fair opportunity of trying the validity of the assertion, made on this floor, that these people do not wish a State government; should that be the case, no doubt they will act accordingly, and all parties be satisfied in the will of the majority.

Mr. W. said, these territorial governments, which the United States have been obliged to resort to, were arbitrary at best, and ought not to exist longer than they could with propriety be dispensed with. They were, he said, opposed to the genius of the people of this country, and in direct hostility with their notions of government; of course we were not to suppose they would be satisfied under them any longer than they may be incapable of self-government. He said he did not wish to take up the time of the Committee in detailing the powers of this Government, and the abuse of them by the government of the Territory, to prove what he had just stated, because he believed they were well known to every member of the Committee, which was quite sufficient for the present purpose.

Mr. W. said, he believed it to be a degree of

justice due to those people, as well as sound policy in the General Government, to admit them into the Union at this time. The people resident in the Territory had emigrated from the different States in the Union, where they had been in the habit of enjoying the benefits of a free form of government; they no doubt looked forward to a very short period, at which they might again enjoy the same as pointed out by the ordinance, to effect which, it was natural to suppose they had invited a migration to their country; but if the doctrine now contended for in opposition, shall prevail in this House, all their hopes are blasted. Ought we not, said he, to have a fellow-feeling for those people? Let any gentleman make their situation his own, and will he longer hesitate as to the propriety and justice of the measure? It cannot be doubted but that these people are ripe for self-government; they now have, or will by the time proposed for their admission, the number required by the ordinance, viz: sixty thousand. By a recurrence to the census taken more than a year past, it will be found their numbers were forty-five thousand; since which we are to suppose a great increase of population, for we find that the United States since then have sold more than a half million acres of land within this Territory, for a sum amounting to more than a million of dollars. It is also to be observed that agreeable to the census taken in that country in the year 1794, the number of its inhabitants did not exceed six thousand; thus in about seven years we find an increase in this country of about forty thousand people. They now pay an expense nearly equal to some of the States, to support their government. From this statement of facts, Mr. W. said, by the time proposed for their admission by the report of the Committee there could be no doubt of their absolute admission into the Union under the ordinance.

Mr. W. said he had stated that it would be the policy as well as the interest of the Federal Government to admit this State into the Union; he believed there were many considerations to warrant this opinion. The General Government owned much valuable land in this country which it wished to sell; that it was a source from which much of our revenue is calculated to be drawn. Certainly then to form this country into a State, and the people to have a free government of their own choice, and enjoy their natural and political rights, will contribute more to the settlement and increase of its population, than under the present form of government. The natural consequence will be a demand for our land as well as an increase in its value; but let Congress once show a disposition not to admit them to those rights, or delay them, and the reverse will certainly be the fact; for it is not to be supposed that the people of America will be disposed to go from a free, into an almost arbitrary form of government, or to remain there. Again, the United States pay towards the support of this Territorial government, between four and five thousand dollars annually, which they will be freed from by adopting the proposed measure. Mr. W. said there was

H. of R.

Northwestern Territory.

MARCH, 1802.

one further consideration, which he thought ought to have weight on the present occasion; he confessed it had much weight with him; which was, that the people in this country were extremely dissatisfied with their present government, and particularly its administration; and this dissatisfaction would increase in proportion to their sense of being entitled to, and ripe for a better. He conceived it to be the duty of all Government to make its people as quiet and happy as possible, consistent with the general good, and to effect which it is of primary importance to grant their reasonable requests. In the present case, he could see no way so well calculated effectually to remove this dissatisfaction, as to give them the liberty of forming for themselves a government. That there would be some still dissatisfied, he had no doubt, but who would they be? He supposed those now in power, and their adherents, who hold offices and appointments not derived from the people, but independent of them; this was a natural consequence. It was not to be expected they would ever agree to a change likely to prove unfavorable to their present situation.

Mr. W. said he would further remark, that, in admitting the Territory to become a State at this time, certain articles of compact were proposed to the convention to be called for forming a government, which, if agreed to, he thought, must prove highly beneficial to the United States as well as that State; among which was, that the lands of the United States to be sold, should be exempted from taxation by that State for a term of years; those articles, to be sure, they were free to reject; yet, he believed, they would be agreed to, as there was an equivalent tendered on the part of the United States, which would induce acceptance. But, in case Congress disregard the wishes of these people at present and keep them out of the Union, until they shall be admitted under absolute right, we are not to expect any favor but in the same way.

Mr. W. said that, in every point of view in which he had been able to consider this subject, its propriety presented itself to his mind so forcibly, that he could not but be surprised at the opposition of some gentlemen. The people settled a country under an express agreement with the United States, that at a certain period they should be admitted to the rights of a free Government, and form a member of the Union. They now come forward, ask it, and show themselves entitled; and that the present Government you have given them has become oppressive, and incompetent to promote their happiness; yet are they to be told, remain as you are, because a few interested characters among you are not agreed that you shall be free. He concluded by saying, however some members of the Committee might be opposed to the measure, he hoped that there would be found a large majority in favor of it.

Mr. BACON.—These resolutions involve two questions. The first of which respects their constitutionality; and the second, their expediency. With respect to the first question, there appears to me to be no reasonable doubt. By the Consti-

tution, the power of admitting new States into the Union is vested in Congress. The third section of the fourth article says: "New States may be admitted by the Congress into the Union." The mode of admission is left discretionary. The power, then, being vested in Congress, and the mode in which this power may be exercised being determined in that other part of the Constitution, which says, Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof;" if this resolution be necessary to carry the vested power into effect, every objection against the constitutionality of the measure must vanish. Not only the power of admission, but also the power of passing the laws necessary for admission must be granted.

As to the expediency of the measure, we may not be so competent to judge; but by the ordinance we find that, when the Territory shall attain a population of sixty thousand, it shall be admitted as a State into the Union; and that, so far as it may be consistent with the general interests of the Confederation, it shall be admitted earlier. If, then, the admission be consistent with the general interests, Congress having the power to admit, ought to exercise it. For we all know that the possession of liberty is a very desirable thing, and ought to be extended liberally, especially where no injury can arise from it.

Mr. GRISWOLD.—I have long been persuaded that when gentlemen are determined upon any particular measure, they can readily find pretexts for it. The Constitution is brought in to their aid, though the fact is, that Territory existed before the Constitution was formed. The people of the Territory never consented to it; nor are they bound by any part of it which gives more power to the Federal Legislature than it gives by the compact. Their rights, under the compact, cannot be taken away by any provisions of the Constitution, to which they were not a party. I shall, therefore, lay the Constitution totally out of the question.

The gentleman from Maryland (Mr. NICHOLSON) and myself, agree in one or two points. We agree that it is competent to Congress to admit the Territory into the Union before it has attained a population of sixty thousand. If this were the sole object of the resolutions, I would agree to them. We agree in another point; that Congress has not the right to impose a convention upon these people without their consent. The question, then, is, whether it is, or is not, the object of these resolutions to impose a convention. Let us turn to the third resolution, which is calculated, in express words, for calling a convention by a law of the United States, and by taking the population of the last census as the basis of representation. If the principle be a sound one, that we have a right to impose a convention upon the people of the Territory, without their consent, how are the opinions of the people on the calling a convention

MARCH, 1802.

Northwestern Territory.

H. OF R.

to be obtained? How is their consent to elect Delegates to be obtained? The consent expressed on the face of the petitions before you cannot be said to be a legal consent. How else, then, can such consent be obtained? In no other way, than by an act of the Territorial Legislature, or by going round to every man in the Territory, and obtaining his opinion. If this be left undone until the election for members of the convention, the result will be a partial expression of the public mind. For one man may vote, and another refuse to vote. Thus you may get a partial convention, composed of a few demagogues. I say, therefore, that, however defective the provisions of the compact, you must obtain the consent of the Territorial Legislature, before you take the step of calling a convention.

Believing the inevitable effect of these resolutions will be to impose a convention on the Territory, I am justified in saying they involve a usurpation of power by the United States, of power not belonging to them. If the resolutions amount to anything, they amount to this; if gentlemen will first obtain the consent of the Territory, in a proper mode, though their population does not amount to sixty thousand, I will consent to their admission into the Union. I am disposed to let them act for themselves, to let them divide, or not divide, the Territory into States, as they please; but I am against imposing anything upon them contrary to their will. They are more deeply interested than we are in the establishment of a proper form of government. They, and not we, are to be bound by it. They, then ought, in its establishment, to act for themselves, and not we for them. I contend that such a measure is extraordinary in this country. I know that it has been practised in other countries. I know that, in Switzerland and in Holland, the people were told by the Republic of France, they had bad constitutions that required alteration, and that the Republic, with sisterly kindness, without asking their consent, imposed conventions upon them, which formed for them entirely new systems of government. But I trust the same thing will not be done here.

I do not think it necessary to inquire into the expediency of this measure, as I have no objection to giving my consent to the admission of the Territory into the Union, even without a population of sixty thousand, if wished for by the people; though I have no idea that the people will be benefited by it, as they will then have taxes to pay, from which they are now exempt. But I do not consider this as a proper objection for us to make, as it ought to rest with the people to say, whether they are willing to pay those taxes.

I say again, we have no right to impose a convention. I believe that the principle on which we take this step goes the full length I have stated, and may, if adopted in relation to the Territory, be applied to all the States. The powers of the Territory, on this head, are as complete as those of the States; and if we interfere with the first, we may interfere with the last. I know that, in Connecticut, the Legislature may regulate the

choice of Governor, and that the Legislature of Maryland chooses the Governor; but these provisions do not give a right to the National Government to interfere in the regulations of the one or the election of the other. So, if the Legislative powers of the Territory are limited, no power is thereby given to the National Legislature over those powers which exclusively belong to the Territory.

Gentlemen may say what they will, but there is nothing under the ordinance to prevent an expression of the public voice of the Territory. It is true that one branch of the Territorial Legislature is chosen by the President, but the other branch is chosen directly by the people. It is, therefore, perfectly safe to trust to the expression of the public will through a Legislature, which is chosen every two years. If gentlemen will confine themselves to giving the assent of the Government to the calling a convention, I will agree to it; I cannot agree to impose one.

Mr. NICHOLSON.—I will not undertake to say, with the gentleman from Connecticut, (Mr. Griswold,) that the people of the Northwestern Territory are not bound by the Constitution, as that doctrine might carry us farther than we mean to go; but I will say, there is nothing in these resolutions that abridge the rights of the people. They, in fact, extend them; and though, in the opinion of the gentleman, the people may not be bound by the Constitution, they may not be unwilling to accept the privileges we now offer them. We are about to bestow upon these people, what man has ever considered as his greatest blessing, the right of self-government; to offer them a full participation in all our rights. They have a right, if they please, to accept these high privileges, which we have a Constitutional right, if we please, to bestow. I do not know that I said, what the gentleman from Connecticut ascribes to me, that Congress has no right to impose upon these people the calling a convention. I did say that Congress had no right to give them a constitution, without their consent. But take gentlemen on their own ground; grant, for argument sake, that we have no right to impose upon them a convention. Is there anything like this contained in the resolution? We only enable them, by the first resolution, to come into the Union under principles not repugnant to the Constitution, or to the ordinance of 1787.

The gentleman from Connecticut says, we are not to collect from the petitions on our table, that every man in the Territory should be admitted into the Union. True, we see that this is not the case. We have evidence here, from the language of the Delegate of the Territory, that there is one man, at least, against it. But, from the completion of these petitions, and from the great number of signatures, we have reason to believe that a large majority of the citizens are for the admission, particularly as we have received no opposing petitions. We have reason to believe that a portion of the people are opposed to the admission, because those elected by the people have communicated to us their indisposition to come into the

H. OF R.

Northwestern Territory.

MARCH, 1802.

Union; also, the Governor, and the member on this floor, are of the same opinion; but when the small number of this description of citizens is contrasted with the several thousand petitioners, who pray for admission, the fair inference is, that a large majority wish to be admitted.

The gentleman from Connecticut says, there is no way of getting the consent of the Territory, but through their usual Legislative organs, or by going throughout the Territory and collecting the opinion of every citizen. But I will ask him how the assent of the people of the United States was obtained to the Constitution, under which we now live? Was it obtained by the assent of all the Legislatures, or by that of every man in the country? No; the same mode was then adopted that we are now pursuing. Conventions were assembled, which ratified the Constitution for their respective States, which was not binding upon those States that ratified it, until adopted by nine States; and then it was adopted as the supreme law of the land in those States. Now, what do we wish? Not to impose a convention upon the people of the Territory, or to say, when the convention shall be convened, they shall adopt a constitution. We take, on the contrary, the same mode pursued by the grand Convention, which did not say that every State should elect conventions, but that, when the conventions of nine States should adopt the Constitution it should be in those States the supreme law of the land. So we say that, when the people of the Territory shall have elected a convention, and adopted a constitution, it shall be valid. Here is no compulsion; we only take the best measures we can devise for obtaining the sense of the people. This, while it is the only, is also the fairest opportunity they can have of freely and fully expressing their sentiments, because, by voting for a man who shall declare himself an advocate of, or an opponent of the measure, the sense of the public will be obtained. This will be accomplished more completely and distinctly, by voting for a man, whose duties will be confined to this single object, than by electing to a Legislature men whose duties are various and multifarious.

I must say that I do believe that the wishes of the people will be better expressed by a convention appointed by the people themselves, than by a Legislature, two branches of which are appointed by the President of the United States.

As to pecuniary considerations, I am at a loss to understand the gentleman from Connecticut, who seems to think that the Territory, when formed into a State, actuated by the inordinate possession of power, will be likely to grasp at our lands. But there will be this difference between his plan and ours. If we admit them now into the Union, we may make very important terms, which they will observe inviolate, if not lost to every principle of good faith; whereas, if we wait until they shall have acquired the right of admission, without our consent, we can make no terms with them whatever.

Mr. GODDARD.—The present question arises out of a question decided before. A proposition was

made by the Legislature of the Territory to divide it; an application to this effect was made to Congress, who refused their assent to it. The people, in consequence of that refusal, now come forward and ask to be adopted as a State into the Union, and we are now called upon to make them a State. If the object of these resolutions were barely to say, they *might* be a State, I should have no objection; but we are about exercising a power over that Territory, that belongs to the Legislature of the Territory. Does not that Legislature possess every power that we are called upon to exercise? Suppose Congress were to decide that they should be admitted; would not the Legislature of the Territory have the power of deciding whether, and how, a convention should be called? Take the case of Maine. Suppose that we not only admit Maine into the Union, but say that a convention shall be called. Would we not, in that case, interfere with the powers of Massachusetts? And do we not, in these resolutions, violate the power of the Territorial Legislature in the same way?

[Here Mr. G. read the third article, which respects the calling a convention.]

The adoption of the first resolution being perfectly useless without the adoption of the third resolution, we are to infer that, if one shall be adopted, the other will also be adopted. For, if this should be the case, we must wait for the expression of the Legislative will of the territory, which we may as well wait for before we adopt the first resolution. It is to be remembered also, that under these resolutions Congress are to pay the expenses of the convention, and that the whole business is indeed under the direction of Congress. Why precipitate this measure, when in all probability, before these details can be made, the Territory will have obtained the number of sixty thousand, and be entitled of right to admission into the Union? For these reasons, I am of opinion, that it will be best to leave the business where it is.

Mr. MACON said the House was brought to a consideration of this subject by the petitions of the people of the Northwestern Territory, who were dissatisfied with their present situation. The people not only of this Territory but of all Territorial government, will be dissatisfied, from the very nature of the government. We first live in one kind of government, and then go into territorial government and we don't find there the same government with the one under which we previously lived. Hence the invariable dissatisfaction.

The only question now is, on agreeing to the first resolution, that is, to give our consent to the Territory being admitted as a State into the Union, before they have attained a population of sixty thousand inhabitants. It seems to me from the petitions before us that a decided majority of the people are in favor of being admitted. These numerous signatures could not be obtained in a corner, or without being known over the whole Territory; and had sentiments prevailed in the Territory different from those expressed in the petitions, we should have had before this time our table covered with counter-petitions.

Mr. M. said he had never heard a Constitutional

MARCH, 1802.

Northwestern Territory.

H. OF R.

question started where there was so little ground for it. He asked whether there was any violation of the Constitution in admitting the Mississippi Territory to the rights of a Legislature before their numbers justified them in requiring it?

The gentleman from the Territory says they may be admitted without a Constitution. But does not the ordinance require that the government shall be republican, and he would ask whether the present government is republican? He believed not. So much did he dislike these Territorial governments, that he wished all the Territories were formed into States, that they might have a share in passing the laws by which they are governed.

The gentleman from Connecticut says this measure will lead to a consolidation of the States. Its effects will be directly the reverse, for the more States there are in the Union, the farther removed shall we be from a consolidation.

We are told that if this application were regular, the gentlemen would have no objection to it. But can any act be more regular than that which proceeds directly from the people?

Mr. FEARING conceived nothing would be more likely to promote disturbances in the Territory than this law, as "he conceived a large portion of citizens would not consider themselves bound by it, and of consequence not send delegates to the convention. He conceived it unconstitutional, as under it a convention might be called, a constitution made, and yet that constitution be void. For suppose that under the act proposed to be passed a convention should be chosen according to the present census, and a constitution formed by them; and suppose that another constitution should be formed by a convention convened by the Legislature of the Territory under a different census; which would be the real constitution of the Territory? Certainly the last, because formed on a true apportionment of the population, and under a law of the Legislature by which the Territory is governed.

The gentleman from Maryland says, that unless Congress interfere, the Territory can never become a State; and to prove this, he refers to the law of the Territorial Legislature, lately before us, expressive of their disapprobation of coming into the Union. But this opinion is not correct; for many of the people of the Territory, though better pleased with the division of the Territory proposed in the law, would still wish a State government, in the event of that division being rejected; and it appears on the journals of the Legislature that some members voted for a State government in that event. If the arguments of gentlemen are sound, we might be kept from obtaining a State government for one hundred years, in case the President should appoint or continue a Governor hostile to such a government. But, Mr. F. said, he conceived the people had a right, when their numbers amount to sixty thousand, to be admitted, even if Congress shall be against admitting them, or the Governor and upper House in addition. He conceived that, under the resolutions of the representatives propos-

ing a convention, if the people agreed to them, a constitution might be formed that would be fully obligatory.

Mr. F. said, when the gentleman from North Carolina (Mr. WILLIAMS) spoke in relation to the petitions on the table, he had presumed that he was going to state the number of petitions in each county. This, however, he had not done. As to himself he did not know from which counties the petitions came, but he presumed they were principally from Ross and Adams.

The gentleman from North Carolina has said, the present revenue of the Territory is sufficient to support a State government, as appeared from the contents of the petitions. The reverse, however, of this is clear, by a document on the table, which furnished information more worthy to be relied on than that of the petitioners, who, themselves, he presumed, paid little, as the present revenue was derived altogether from land.

If the Constitution is as binding as gentlemen contend, Mr. F. conceived that the law of Congress had vested a right in the Territory which Congress cannot impair, viz: the right of the Legislature to call a convention when the numbers of the Territory shall reach sixty thousand.

As to the idea of gentlemen respecting a republican form of government, Mr. F. conceived Connecticut to be under a republican form of government, which, however, consisted of nothing more than fixed habits, which depended upon a law which might at any time be repealed. There was, in reality, no constitution, therefore, in Connecticut; so he conceived the Territory at liberty to form, or not to form, a constitution. If not at liberty, the terms of the ordinance would have been imperative.

Mr. GODDARD moved to amend the first resolution, by inserting the words "for giving the consent of Congress;" so as to read, "that provision ought at this time to be made by law for giving the consent of Congress to the inhabitants of the Eastern division of the Territory, to form for themselves a constitution and State government," &c.

Mr. G. said, his only objection to the original resolution was that, under it, Congress usurped powers vested in other bodies. Should this amendment prevail, there would be no occasion to inquire into the principles involved in the subsequent resolutions.

The question was taken on this amendment, and lost—yeas 13.

The question was then taken on the first resolution, and carried—yeas 47.

WEDNESDAY, March 31.

Mr. DAVIS, from the committee to whom was yesterday referred a motion respecting "members of this House dying at the seat of Government during a session of Congress," made a report thereon; which was read and considered: Whereupon,

Resolved, That the expenses accruing by order of the House, in attending the funeral of NARS-WORTHY HUNTER, a member from the Mississippi

H. OF R.

Northwestern Territory.

MARCH, 1802.

Territory, be paid out of the contingent funds of the House.

Resolved, That the legal representatives of a member of this House, who shall die at the seat of Government during the session, shall be entitled to receive the same allowance for his itinerant expenses, as the member would have been entitled to, had he returned to his place of abode.

A petition of David Austin, in behalf of himself and others, inhabitants of the City of Washington, in the District of Columbia, was presented to the House and read, praying that such a sum of money as Congress, in their wisdom, may deem sufficient, may be appropriated for the building of a house for the exercise of public worship, on the Capitol Hill, for the accommodation and benefit of the inhabitants, and the improvement of the said city.

Ordered, That the said petition be referred to a Committee of the whole House on Friday next.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

According to the desire expressed in your resolution of the twenty-third instant, I now transmit a report of the Secretary of State, with the letters it refers to, showing the proceedings which have taken place under the resolution of Congress, of the sixteenth of April, one thousand eight hundred. The term prescribed for the execution of the resolution having elapsed before the person appointed had sat out on the service, I did not deem it justifiable to commence a course of expenditure after the expiration of the resolution authorizing it. The correspondence which has taken place, having regard to dates, will place this subject properly under the view of the House of Representatives.

TH. JEFFERSON.

MARCH 31 1802.

The said Message was read, and, together with the papers referred to therein, ordered to lie on the table.

Mr. SOUTHARD, from the committee to whom was recommitted, on the twenty-seventh instant, the bill further to alter and establish certain post roads, reported an amendatory bill, which was twice read and committed to a Committee of the whole House to-morrow.

On motion, it was

Resolved, That a committee be appointed to prepare and report a bill declaring the assent of Congress to an act of the General Assembly of Virginia, entitled "An act to amend, and reduce into one, the several acts of Assembly for improving the navigation of Appomattox river, from Broadway to Pocahuntas bridge."

Ordered, That Mr. GILES, Mr. WALKER, and Mr. STANFORD, be appointed a committee pursuant to the said resolution.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to repeal the internal taxes," with several amendments; to which they desire the concurrence of this House.

NORTHWESTERN TERRITORY.

The House went again into Committee of the Whole on the report of a select committee respect-

ing the admission of the Northwestern Territory as a State into the Union.

The second resolution being under consideration, Mr. FEARING referred to the provisions of the ordinance empowering Congress to divide the Territory, from which he inferred that Congress had not the right to divide the Territory so as to form one part of it into a State, while the remaining section was not made a State, without the consent of the Territory; he conceived that Congress must, in such event, form this section also into a State. He, therefore, was of opinion that Congress must consult the people of the Territory before they shall divide the Territory.

As to the expediency of the resolution, he thought it very inexpedient to make the division therein marked out. The effect of it would be that the whole of Lake Erie would be thrown out of the State to be formed, and the inconvenience to the section of the Territory not incorporated in the new State would be very great, if it should be attached to the Indiana Territory, from its great distance, which he understood was contemplated.

Mr. GILES said that the committee who reported these resolutions, so far from entertaining a disposition to change the ordinance, had strictly observed the conditions therein prescribed. [Mr. G. here quoted the ordinance.] It appeared therefrom that Congress was under an obligation, after laying off one State, to form the remainder into a State. But when? Hereafter, whenever they shall think it expedient to do so.

Mr. BAYARD agreed that there was no obligation imposed upon Congress to decide definitively the boundary of a State. If the ultimate right of Congress, after the formation of a new State, to alter the boundary be doubted, they have a right to remove all doubts by so declaring at this time. It is certain that at present great inconvenience would arise from drawing the boundary as fixed in the resolution.

The population of the Territory does not amount to that which is sufficient to give it admission into the Union. He had, however, no disposition to oppose its admission, notwithstanding this circumstance. The population in the Eastern State does not exceed forty-five thousand. We are now about to pare off five or six thousand inhabitants, which will bring it down to thirty-nine thousand. A population of forty-five thousand is quite small enough for an independent State. It is a smaller population than exists in any of the present States in the Union. From this consideration, it might have been expected that Congress would take no step whose effect would be a diminution of that population.

The division, as made in the resolution, is manifestly unjust, as far as it relates to the people north of the dividing line. By it they are about to be severed from their connexion with the other portion of the Territory. Mr. B. wished to know to whom they are to be attached? If attached to the Indiana Territory, the inhabitants, to arrive at the seat of Government, will be obliged to go across the new State, a distance of two or three

MARCH, 1802.

Northwestern Territory.

H. OF R.

hundred miles. Besides, after having advanced them to the second grade of territorial government, you will consign them back again to the first, and thereby give them a system of government extremely odious, and which we ought to get rid of as soon as possible. Thus, after having held out to them the flattering prospect of being elevated to the high rank of a State, you degrade them, contrary to their expectations, to the humblest condition in the Union. Mr. B., therefore, thought it would be most just and politic to include this population of five or six thousand in the bounds of the new State, subject to the reserved right of Congress to alter the boundary hereafter.

Mr. GILES said he was not tenacious of his opinions; but it was necessary to justify the contents of the report by stating some considerations that might not be generally known to the members of the House.

Mr. G. said he supposed the section of the Territory, not embraced in the new State, would be attached to the Indiana Territory; nor would any great hardship result from this disposition; and such as did result would arise from their local situation, and not from any circumstances over which the National Legislature had a controlling power. He believed that people, to reach the seat of Government, had as far to go now as they will then have. His object was to reserve in future to Congress the right of determining the boundary of the States in the Territory. If this section should once be admitted, he believed it would be very difficult, however proper, to detach it from the State to which it had become attached.

The report contemplates the forming a constitution. Should the people on the northwardly side of the line be admitted as a part of the State, they will participate in the formation of the constitution—a constitution which will not be ultimately for themselves, but after a short time exclusively for others. This participation would be unjust. The question then is, whether you will suffer those to form a constitution who are not to be permanently affected by it; and whether, if you once constitute a State, you will be able hereafter to alter its boundaries? For if this section be now admitted, gentlemen, by looking at the map, will see that the boundary now fixed cannot be permanent.

As to the remarks made by the gentleman from Delaware, Mr. G. said he was extremely glad that gentleman was for giving to the Territory the right of a State. If, however, he had attended to the report, he would have found that his calculation of numbers was incorrect. The population of five thousand had been deducted by the Committee, and after that deduction forty-five thousand remained. Though the numbers in the Territory proposed to be formed into a State amounted, a year ago, to no more than forty thousand, yet it might be stated upon strong ground, that, before the new government can get into operation, there will be a sufficient population to demand admission as a matter of right. By attaching the inhabitants on the north of the

line to the Indiana Territory, they will remain in the same grade of government they now are, and not be degraded, as stated by the gentleman from Delaware, to a lower state. This disposition appeared to Mr. G. the best that could be made. But if, when gentlemen came to the details of the bill, it should be thought best to introduce into the new State the population north of the line, he said he might have no objection.

Mr. FEARING stated the great inconveniences that would be felt by the inhabitants north of the line, if attached to the Indiana Territory. He considered the remarks of the gentleman from Virginia, (Mr. GILES,) respecting the participation of this description of citizens in forming a constitution for others as entitled to little weight. Such a measure was by no means uncommon. It had been done in the case of Kentucky, and other States.

Mr. F. conceived that the people of the Territory had all equal rights under the ordinance; they had been virtually promised that they should not be attached to any other Western Territory, and Congress had only reserved to themselves the right of admitting them into the Union as States. More they could not do, without their consent.

Mr. BAYARD moved to strike out of the resolution the words that fix the boundary, for the purpose of introducing words that should prescribe that the new State be circumscribed by the original boundaries of the Eastern State, referring to Congress the right of making one or more States in said State at any future time.

Mr. GILES said that the State, as formed in the report, was one of the most compact and convenient in the Union. The amendment would materially change its character. Besides, it would in fact impair the right of Congress to accommodate the boundaries to future circumstances. It was well known, and sensibly felt, that there were many inconvenient boundaries to several of the States now in the Union; yet so great was the difficulty attending their alteration, that they could not be changed.

Mr. BAYARD was not so sensible of the difficulty of altering the boundaries as the gentleman from Virginia, who had stated that Congress would not have power to alter them when once fixed. This difficulty might exist as to the States now in the Union, because Congress had not the Constitutional power to alter them without the consent of the adjacent States. But if this power be referred to Congress, which will be a disinterested tribunal, there will be no difficulty in varying the boundaries as circumstances shall dictate.

Mr. B. asked, if, while gentlemen are attending to the interests and wishes of one part of the people, they are disposed to disregard the interests and wishes of another part? If they were not, they ought to admit the section, proposed by the resolution to be cut off, to a participation in State rights.

Mr. BACON objected to the amendment. He said that Congress were vested by the Constitution with certain powers which they cannot increase, or diminish, or delegate. By the Consti-

tution, likewise, the several States are vested with certain powers which they cannot increase, diminish, or divest themselves of. By the third section of the fourth article of the Constitution, "new States may be admitted by the Congress into the Union." This act proposes to make this Territory a State with State powers under the Constitution. How, then, can these people, once a State, divest themselves of these powers. This is a question that does not interest simply the State proposed to be formed, but every State in the Union. All are equally interested in preserving the powers vested in them by the Constitution.

Mr. GODDARD said, that were he to vote for making the Territory a State, he should be in favor of extending State rights to all the inhabitants of the Territory. He moved to strike out the proviso to Mr. BAYARD's motion, which reserves to Congress the right of altering the boundary.

Mr. FEARING remarked that he was not a little surprised to find gentlemen, who a few days since voted that the Legislature of the Territory had not a right to alter the boundaries without the permission of Congress, now contending that Congress have that right exclusively.

Mr. BAYARD said he did not see any occasion for striking out the proviso. The gentleman from Massachusetts, (Mr. BACON,) goes on the principle that Congress has only a right to admit, without any reservation. Mr. B. said he had always believed the greater included the smaller. If you are vested with the greater power of admitting, you have certainly the minor powers included in the greater power. From the nature of the ordinance, it constitutes the fundamental principle on which the States are admitted—they are not admitted under the Constitution. They are to be admitted exclusively under the provision of the ordinance. You may, therefore, say that you will not now exercise the whole power committed to you, but reserve the right of exercising it hereafter.

Mr. SMILIE did not consider the principle laid down by the gentleman from Delaware as Constitutional. We must be governed by the Constitution. If the Territory be admitted as a State into the Union, when admitted it must be bound down by the Constitution, which says the boundaries of States shall not be altered but with the express permission of the State.

The question on striking out the proviso was lost without a division.

The question was then taken on Mr. BAYARD's amendment; which was lost—yeas 18, nays 38.

Mr. FEARING moved to strike out that part of the resolution which reserves to Congress the right of altering the boundary after the State is admitted. Lost—yeas 20.

The question was then taken on the second resolution, and carried in the affirmative—yeas 42.

The third resolution was then agreed to—yeas 42.

The fourth resolution was agreed to without a division.

On motion of Mr. FEARING the right to two

salt springs, besides those at Scioto, was vested in the new State.

Mr. GRISWOLD moved to strike out the third article, which provides that one-tenth part of the net proceeds of the sales of Western lands should be applied to the making roads "leading from the navigable waters emptying into the Atlantic to the Ohio, and continued afterwards through the State of —."

Mr. G. said he objected to this article, because the proceeds of the Western lands had been appropriated to the payment of the public debt, and to make roads for the States of Virginia and Pennsylvania would be the sole effect of this article. This, however disguised, would be the effect. Mr. G. said he knew, how large and powerful were the delegations of Virginia and Pennsylvania on that floor; yet he hoped, notwithstanding their strength, so unjust a measure would not be agreed to. He knew the proposition came from a public officer, whose estate lay in the western parts of Pennsylvania, whose value must be appreciated by the roads contemplated in the resolution. He alluded to the Secretary of the Treasury, whom he was justified in considering as the author of the plan from his letter accompanying the report.

Mr. GILES said he was sorry there was any part of the report that had a local aspect. But this was unavoidable. Local considerations were often necessarily blended with principles of general utility. He recollected the passage of several bills for the erection of light-houses; though he did not recollect how many of these were raised at the public expense on the Connecticut shore. Considering them as useful, though they had a local effect, he had always voted for them. He would also mention certain circumstances attending the aiding of the fisheries to the eastward, to which certain benefits were attached that were derived from the contributions of other parts of the Union. Yet he had always voted for them, notwithstanding their local application.

So far as relates to Virginia, the simple effect of this resolution will be to form a road over a mountainous country. Mr. G. said he was himself as little interested as the gentleman from Connecticut. Yet, where measures were devised whose great object was the general benefit, though they might be attended with local advantages, he had no objection to them. He believed the State of Maryland, the Federal City, Alexandria, Baltimore, and Philadelphia, would be most benefited by facilitating an interchange of commodities.

Mr. G. said he considered the circumstances of connecting the different parts of the Union by every tie as well of liberal policy as of facility of communication highly desirable. He further believed that the devoting one-tenth of the proceeds of the lands to the laying out new roads would be in fact no relinquishment on the part of the United States, as the lands thereby would be greatly enhanced in value. If, however, it shall be thought that this sum will be better applied in the opening roads in the interior of the State, he should have no objection to that.

APRIL, 1802.

Northwestern Territory.

H. OF R.

The gentleman from Connecticut, (Mr. GRISWOLD,) affects lately to have discovered a great deal of disguise in the proceedings of this House. What disguise? What were the committee to do? This country is placed in a certain peculiar situation. We have waters running to the East—they to the West; and the committee thought it was desirable to connect these by good roads. With the committee, State principles or interests had no influence—they were governed entirely by general principles and the common interest.

The gentleman has also insinuated that the Secretary of the Treasury holds lands that will be benefited by these roads. It may be so. Mr. G. had not inquired; but he supposed he did not hold all the lands. Congress may lay out these roads as they please. He could foresee how Congress would lay them out, and it is a million to one that they will not touch his lands.

The United States are about making a new contract. These propositions are made as additional securities for the national property. The Secretary of the Treasury having estimated the annual product of these lands at four hundred thousand dollars, Mr. G. said, as chairman of the committee, he had applied to him to know his opinion of the manner in which this sum could be best secured, and he gave his opinion that this provision would be most likely to effect that object. This is all the mystery and disguise attending the resolution.

Mr. SMILIE said when gentlemen charge particular States with injustice, they ought to be prepared to prove what they advance. If there had been any co-operation between the delegations of Virginia and Pennsylvania on this occasion, he had never heard of it. The fact was, that no peculiar good could result to Pennsylvania from this measure. The great object was to keep up that intercourse which will attach the people of the Territory to you. When the Territory shall become a State, she will have a right to tax your lands. This benefit, together with the salt-springs, as I understand, is proposed as a substitution for the relinquishment of those rights.

Mr. FEARING said he considered a part of the rights of the Territory given up by this resolution; and though the Territory would be highly benefited by the projected roads, and the cession of the salt-springs, yet he conceived they would be much more benefited by laying out the roads within the Territory.

Mr. GRISWOLD said he was glad the honorable gentleman from Virginia had assured the House there was no disguise in this business. If the object be to make an advantageous contract with the Territory to secure our Western lands, let us offer them five per cent. of the proceeds of those lands, to be paid into their treasury. If they shall be disposed to make roads through Pennsylvania and Virginia, he should have no objection.

He was as sensible as the gentleman from Virginia, that whatever improves a part of the Union improves the whole; though this was undoubtedly the case, he was not of opinion that a sum of money should be taken from the public treasury,

and specially applied to local purposes. Under this resolution, according to the calculation of the Secretary of the Treasury, forty thousand dollars was the smallest sum that would be annually applied to the laying out those roads. Mr. G. said he thought the sum too large to be withdrawn from the national treasury, and directed to local objects.

The allusion of the gentlemen to light-houses raised on the Connecticut shore does not apply. There was but one light-house in Connecticut, ordered to be built by this House, for which the enormous sum of twenty-five hundred dollars had been appropriated. Yet this solitary measure had been rejected by the Senate. This is the great boon given to Connecticut!

For these reasons Mr. G. hoped the article would be stricken out, and that, if it was necessary to make terms with the new State, they might receive five per cent. on the receipts of the land, to be paid into their own treasury, disposable by themselves as they saw fit.

Messrs. R. WILLIAMS, JACKSON, and HOLLAND, said a few words in favor of retaining the article; when the question was taken on striking it out, and lost—yeas 17.

Mr. FEARING, wishing that half the proceeds of the Western lands should be laid out on roads within the Territory, made a motion to that effect; lost—yeas 25.

The report of the select committee, without further amendment, was then agreed to, and a bill ordered in conformity thereto.

THURSDAY, April 1.

Mr. DENNIS, from the Committee of Claims, presented a bill for the relief of John Travers and Charles A. Beatty; which was read twice and committed to the Committee of the whole House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to repeal the internal taxes;" Whereupon, the said bill, together with the amendments, was committed to the Committee of Ways and Means.

On motion, it was

Resolved, That the Secretary of the Treasury be directed to furnish this House with an estimate of the expenses incurred by the United States in the exercise of jurisdiction over the Territory of Columbia, since the assumption of jurisdiction by Congress.

The House, resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act making appropriation for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada; and, after some time spent therein, the Committee rose and reported the bill without amendment.

The bill was then read the third time and passed.

The House went into a Committee of the Whole on the bill sent from the Senate, entitled "An act to empower John James Dufour and his associates to purchase certain lands. After making some progress therein the Committee rose and were re-

H. OF R.

City of Washington.

APRIL, 1802.

fused leave to sit again; so the bill was recommitted to Mr. ELMENDORF, Mr. DAVIS, and Mr. CUTLER.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of Isaac Zane," with an amendment; to which they desire the concurrence of this House.

The House then resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the thirtieth ultimo, to whom were referred the amendments proposed by the Senate to the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor, for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes;" and, after some time spent therein, the Committee rose and reported their agreement to the same.

The House then proceeded to consider the said report and amendments at the Clerk's table: Whereupon,

Resolved, That this House doth agree to the first, third, fifth, and sixth amendments.

Resolved, That this House doth also agree to the second part of the second and fourth amendments, with amendments to the same, respectively.

Resolved, That this House doth disagree to so much of the second and fourth amendments of the Senate, as proposes to strike out certain words in the fourth and fifth sections of the original bill.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of Isaac Zane." Whereupon,

Resolved, That this House doth agree to the said amendment.

CITY OF WASHINGTON.

The House went into Committee of the Whole on a report respecting the City of Washington.

In lieu of the first resolution, one was substituted, on motion of Mr. DENNIS, for abolishing the present Board of Commissioners, and empowering the President to appoint one or more agents to manage the affairs of the city.

Mr. GRISWOLD moved to amend the third resolution by striking out that part which empowers the President to advance moneys from the Treasury to pay the instalments of \$200,000, and, in case too great a sacrifice would be made by selling city lots.

This motion was opposed by Mr. NICHOLSON, and lost—yeas 20.

Mr. GREGG moved to strike out the proviso in the fourth resolution, which saves from immediate sale a certain portion of city lots pledged to the payment of \$50,000 loaned of Maryland.

This motion was supported by Messrs. GRISWOLD, EUSTIS, MITCHILL, BACON, RANDOLPH, and ALSTON; and opposed by Messrs. NICHOLSON and HOLLAND; and carried—yeas 45, nays 20.

* Mr. NICHOLSON moved to strike out the first part of the fourth resolution, and insert in lieu thereof a provision that in case the proceeds of the lots do not prove adequate to repay the loan

of Maryland, the deficiency shall be paid out of the Treasury.

This motion was supported by Messrs. NICHOLSON, ALSTON, T. MORRIS, and DENNIS, and opposed by Mr. GREGG.

The Committee rose without coming to a decision, and asked leave to sit again.

FRIDAY, April 2.

Mr. BACON, from the committee appointed on the fourth of January last, to whom it was referred, on the twenty-fifth ultimo, "to consider whether any, and if any, what, reduction ought to be made from the pay of the Senators and Representatives in Congress, as now established by law," made a report; which was read, and ordered to lie on the table.

Mr. GILES, from the committee appointed on the thirty-first ultimo, presented a bill declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned; which was read twice and ordered to be engrossed, and read the third time to-morrow.

Mr. GILES, from the committee appointed on the eighth of February last, presented a bill to repeal so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States," the other, "An act entitled 'An act supplementary to the act establishing a Mint, and regulating the coins of the United States,' as relate to the establishment of the Mint; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. RANDOLPH, from the Committee of Ways and Means, who were instructed, on the twenty-sixth ultimo, "to inquire into the expediency or inexpediency of authorizing the Secretary of the Treasury to remit the duties, in all cases which have accrued, or may accrue, on spirits distilled, and on stills, within the United States, upon satisfactory proof being made to the said Secretary that such stills, or distilling materials, have been accidentally destroyed by fire, rendered useless by an inundation of water, or other unavoidable casualty," made a report thereon; which was read and considered: Whereupon,

Resolved, That it is inexpedient to authorize the remission of the duties which have accrued, or may accrue, on distillation, in any case whatever.

Mr. GILES, from the committee appointed on the thirty-first ultimo, presented a bill to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes; which was read twice and committed to a Committee of the Whole House on Monday next.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom were yesterday referred the amendments proposed by the Senate to the bill, entitled "An act to repeal the internal taxes," reported that the committee had had the said amendments under consideration, and directed him to report to the House their agreement to the same.

APRIL, 1802.

City of Washington.

H. OF R.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned,'" and extending the benefits thereof to the arts of designing, engraving, and etching, historical and other prints; to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole House.

The House proceeded to the further consideration of the amendments proposed by the Senate to the bill, entitled "An act to repeal the internal taxes;" to which the Committee of Ways and Means this day reported their agreement: whereupon,

Resolved, That this House doth concur with the committee in their agreement to the amendments of the Senate to the said bill.

The House resolved itself into a Committee of the Whole on the report of the committee of the twenty-sixth ultimo, on the petition of Richard Soderstrom, attorney in fact for Paolo Paoly, a subject of the King of Denmark, referred the twenty-second of the same month; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That provision ought to be made by law to refund and pay to the petitioner, Paolo Paoly, out of any money in the Treasury not otherwise appropriated, the sum of seven thousand and forty dollars and fifty-five cents, it being the amount of damages and costs of suit awarded by the circuit court of Pennsylvania, in its judgment of restitution, on behalf of the petitioner, against Captain William Maley, commander of the public armed vessel the Experiment, belonging to the United States.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that Mr. EUSTIS, Mr. GREGG, and Mr. J. C. SMITH, do prepare and bring in the same.

Ordered, That Mr. R. WILLIAMS be added to the committee appointed on the fourteenth of December last, "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons entrusted with the public money," in the room of Mr. JONES, who has obtained leave of absence for the remainder of the session; and that the said committee have leave to sit to-morrow, during the sitting of the House.

CITY OF WASHINGTON.

The House again resolved itself into a Committee of the Whole on the report of the committee of the twelfth of February last, to whom was referred a Message from the President of the Uni-

ted States, transmitting a memorial and letter to him from the Commissioners of the City of Washington; and to whom was also referred, on the fifth of the same month, a motion respecting the discontinuance of the offices of the said Commissioners; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

1. *Resolved*, That, from and after the — day of — next, the Board of Commissioners in the City of Washington ought to be abolished, and thereafter all the powers vested in the said Board ought to be vested in, and discharged by, an agent, to be appointed by, and to be under the control of, the President of the United States.

2. *Resolved*, That, prior to the first day of March next, the said Commissioners ought to settle their accounts with the accounting officers of the Treasury; and all debts which have been contracted by them in their capacity as Commissioners, and for the payment of which no particular provision is hereinafter made, ought to be discharged in the usual manner, by the said agent.

3. *Resolved*, That so many of those lots in the City of Washington which are pledged for the re-payment of a loan of two hundred thousand dollars, made by the State of Maryland, in the years one thousand seven hundred and ninety-six and one thousand seven hundred and ninety-seven, to the Commissioners of the said city, ought to be annually sold, as may be sufficient to pay the interest and instalments of the said loan as they may respectively become due: *Provided*, That if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency ought to be advanced from the Treasury of the United States.

4. *Resolved*, That all the lots in the said city which were sold prior to the sixth day of May, one thousand seven hundred and ninety-six, and have since reverted to the Commissioners, in consequence of a failure on the part of the purchasers to comply with their contracts, ought to be sold for the purpose of paying to the State of Maryland the sum of fifty thousand dollars, with the interest thereon, on or before the first day of November next; which said sum was loaned by the said State, in the year one thousand seven hundred and ninety-nine, to the Commissioners, for the use of the City of Washington: *Provided*, That if a sufficient sum to meet the objects aforesaid cannot be raised by the sale of the whole of the lots, then so much money as will be sufficient to make up the deficiency ought to be advanced from the Treasury of the United States.

5. *Resolved*, That all moneys advanced out of the Treasury of the United States, in pursuance of these resolutions, ought to be reimbursed as soon as possible, after the debts already contracted by the Commissioners have been discharged, by applying towards the reimbursement every sum of money which may be afterwards raised out of the city funds, until the whole of the money advanced shall be repaid.

Ordered. That a bill or bills be brought in pursuant to the said resolutions, and that Mr. NICHOLSON, Mr. BAYARD, Mr. J. TALIAFERRO, jun., Mr. HASTINGS, and Mr. ALSTON, do prepare and bring in the same.

H. OF R.

Proceedings.

APRIL, 1802.

SATURDAY, April 3.

An engrossed bill declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned, was read the third time and passed.

A petition of James Johnson and others, justices of the court of common pleas of the county of Knox, in the Indiana Territory of the United States, was presented to the House and read, praying that the ordinance of Congress under the former Government, of the thirteenth of July, one thousand seven hundred and eighty-seven, may be so far revised and amended by law, as to give chancery powers to the judges of the said Territory.

Ordered, That the said petition be referred to the committee appointed on the fourth of January last, "to inquire whether any, and what, alteration should be made in the Judicial establishment of the United States; and to report a provision for securing the impartial selection of juries in the courts of the United States."

A memorial of the Mayor and Commonalty of the town of Alexandria, in the District of Columbia, was presented to the House and read, stating the inconveniences and injury sustained by the poorer classes of citizens in the town and county of Alexandria, by the operation of the existing laws for the government of the said District, in the case of fees allowed to be taxed upon suitors, to the lawyers, marshal, attorney for the District, and for the attendance of witnesses, in the circuit court of the United States, held in and for the said city and county; and praying relief in the premises. *Referred*.

On motion of Mr. MILLEDGE, it was

Resolved, That the Secretary of War be directed to cause such documents as may remain in the War Office, or such as he may be able to procure from the files of the Executive of Georgia, for the years one thousand seven hundred and ninety-one, one thousand seven hundred and ninety-two, one thousand seven hundred and ninety-three, one thousand seven hundred and ninety-four, and one thousand seven hundred and ninety-five; also, from the agent of the War Department for the Southern district, for those years; with every other statement and paper he may become possessed of respecting the militia claims of that State against the United States, together with his opinion of the propriety and justice of allowing the same; and that he report such opinion and documents appertaining thereto, on the first day of the next session of Congress.

Mr. EUSTIS, from the committee appointed, presented a bill for the relief of Paolo Paoly; which was read twice, and committed to a Committee of the Whole House on Monday next.

The House resolved itself into a Committee of the Whole on the amendatory bill further to alter and establish certain post roads; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally read, and agreed to by the House.

Ordered, That the further consideration of the said bill be postponed until Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for revising and amending the acts concerning naturalization," with several amendments; to which they desire the concurrence of this House.

The House went into Committee of the Whole on the report of the committee, of the twenty-fifth ultimo, to whom was referred the petition of Theodosius Fowler, presented the third of February, one thousand eight hundred and one; and, after some time spent therein, the Committee rose and reported two resolutions; which were read, amended, and agreed to by the House, as follows:

1. *Resolved*, That the claim of the United States against Theodosius Fowler, for moneys advanced or paid on account of his contract with the Secretary of the Treasury, dated the twenty-eighth day of October, one thousand seven hundred and ninety, ought to be extinguished.

2. *Resolved*, That the suit commenced by the United States against the said Theodosius Fowler, in the circuit court of the district of New York, for a claim on account of the said contract, ought to be no further prosecuted, and that the Comptroller of the Treasury be, and is hereby, authorized and required to cause the same to be withdrawn.

Ordered, That a bill or bills be brought in pursuant to the said resolutions, and that Mr. ELMENDORF, Mr. L. R. MORRIS, and Mr. HOLMES, do prepare and bring in the same.

MONDAY, April 5.

A petition of sundry citizens of Georgetown and its vicinity, in the District of Columbia, was presented to the House and read, praying that the present directors of "The Columbian Library Company," therein named, and their legal successors, may, by law, be incorporated, and constituted a body politic, with such privileges and immunities as are usual in such cases. *Referred*.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement of goods, wares, and merchandises, exported from the Mississippi district during the year 1801, in addition to the general statement of exports received by the House on the eleventh of February last; which were read, and ordered to lie on the table.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented a bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; which was read twice, and committed to a Committee of the Whole House on Wednesday next.

The House proceeded, at the Clerk's table, to the farther consideration of the amendatory bill further to alter and establish certain post roads; and the same being further amended, was, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled

APRIL, 1802.

French Corvette Berceau

H. OF R.

"An act for revising and amending the acts concerning naturalization:" Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. MITCHILL, Mr. GODDARD, Mr. SMILE, Mr. THOMPSON, Mr. LEWIS R. MORRIS, Mr. WADSWORTH, and Mr. STANFORD.

The House resolved itself into a Committee of the Whole on the amendments proposed by the Senate to the bill, entitled "An act to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson;" and, after some time spent therein, the Committee arose and reported their agreement to the same. The House then proceeded to consider the said amendments at the Clerk's table: Whereupon, the question being taken that the House do concur with the Committee of the whole House in their agreement to the same, it was resolved in the affirmative.

Mr. VAN NESS submitted the following resolution:

Resolved, That any ship or vessel, two-thirds of which shall have been, or may be, rebuilt within the United States, of American materials, and belonging wholly to a citizen or citizens of the United States, may be registered, and considered as an American ship or vessel: and that it shall be the duty of the collector of the district within which such ship or vessel is or may be owned, upon satisfactory evidence of the above facts, to grant such register, according to the rules by law established in other cases.

The House resolved itself into a Committee of the Whole on the bill for the relief of Paolo Paoly. The Committee reported the bill without amendment; and it was ordered to be engrossed, and read the third time to-day.

A bill from the Senate for the better securing of public property in the hands of public agents, was read a second time.

Mr. BAYARD stated the great inconveniences which, in his opinion, would arise from the provisions of this bill; one of which made the bonds given by the public agents a lien on the landed property, the existence of which bonds, not being entered of record, could not be known to the purchaser. Mr. B. stated further reasons, which induced him to move a reference of the bill to a select committee.

After a short discussion the question of reference obtained.

Mr. ELMENDORF, from the committee appointed, presented a bill for the relief of Theodosius Fowler; which was read twice and committed to a Committee of the whole House to-morrow.

CORVETTE BERCEAU.

Mr. GRISWOLD remarked that much had been said respecting the money expended on the Berceau. In order to obtain correct information he submitted a resolution substantially as follows:

Resolved, That the Secretary of State be directed to report to this House whether the sum of \$32,839 54, laid out in repairing the corvette Berceau, before her delivery to the French Republic, was expended, in order to equip her for the service of the United States, or for the purpose of delivering her to the French Re-

public, agreeably to the stipulations of the Convention between the United States and France.

Mr. S. SMITH said this object had been already reported upon, and full information obtained. Now gentlemen want to arrive at the motives of the Executive, and desire this House to aid them in their efforts. He believed, however, it was the first time the motives of public officers had been called for by Congress.

Mr. GRISWOLD.—The fact is ascertained that the money has been taken from the Navy fund; also, that the Berceau became by capture an American vessel; but other important facts are not ascertained. It is a little extraordinary that, if the repairs were made for the Berceau as an armed vessel of the United States, they should have been made after a law had passed reducing the public armed vessels to thirteen. If the information required be a secret of State, it ought not to be disclosed; but I suppose it is no secret; I see no valuable purpose to be answered by secrecy. Further, when these repairs were put on the corvette, the convention was partially ratified, and the vessel in fact was given up before the treaty was returned from France. I suppose, therefore, the repairs were put upon her for the purpose of delivering her up to the French Republic. I wish to know whether they were made for this object.

Mr. S. SMITH.—The gentleman from Connecticut is under a mistake. The Berceau did not become a vessel of the United States in consequence of her capture. She was purchased in by the Navy Department. I believe that everything the House has a right to demand from the Executive has been given. I do not see the reason for asking why the Executive did such or such a thing. The House have a right to ask for facts, but not opinions.

Mr. GILES hoped the resolution would be suffered to lie on the table. He did not believe there existed any precedent to warrant it. He was surely one of those who desired everything to be disclosed. He believed, however, the Secretary of State knew nothing about the business of the Berceau, which came not properly before his department. Much had been said respecting the Berceau. He believed very little could be obtained by gentlemen from all the inquiry they could make. The fact was, that, under the late Administration, the Berceau had been purchased, and by the late Secretary of the Navy, for the purpose of delivery. This information, Mr. G. said, he had from the late Secretary himself.

Mr. BAYARD.—The honorable gentleman from Virginia has given the House sufficient cause for complying with the wishes of the mover of this resolution. He has stated certain information obtained by word of mouth from the late Secretary of the Navy. I also possess information derived from the same gentleman, but directly the reverse of that given by the gentleman from Virginia. My information, too, is extremely recent, and therefore such as I cannot but depend upon. However, all this shows the necessity of having written and official information, which can be sub-

H. OF R.

French Corvette Berceau.

APRIL, 1802.

ject to no misconception. As the gentleman has stated his information, I will state mine, received recently from the Secretary at a dinner table.

From the late Secretary, I understood that after the proceedings in the district court of Massachusetts, and the property was ordered to be sold, it was thought by the Secretary of the Navy that there would be a great sacrifice, and he directed her to be bought in; but he expressly directed that there should be no repairs made, as it was not then known whether she would be the property of the United States—his orders directing barely so much to be done as to prevent the corvette from being deteriorated. I also understood that the gentleman from Maryland, (Mr. S. SMITH,) the day after the former Secretary went out of office, ordered the repairs.

I do not see how gentlemen can resist agreeing to such a resolution—a resolution which simply calls for information. It is said the Secretary of State knows nothing about the business. If so, it is easy to insert the name of the proper officer, viz: the Secretary of the Navy.

The information required is proper for this House to possess. Before this Congress, I never knew that any information had been refused, necessary to enable the members to form opinions on subjects properly under their direction. If such information ever has been received, it was wrong, and the precedent ought not to govern us.

The gentleman from Maryland says we are not to call for this thing or that thing from the Executive officers. But if such a doctrine as that prevails, they will soon cease to be the servants of the nation. And surely they have at present no reason to complain of the trouble we give them, as we are about to be liberal and to augment their salaries.

This resolution contains no reference to motives; it is an inquiry into facts, whether the repairs put upon the *Berceau* were made for the purpose of retaining her as an armed vessel of the United States, or for the purpose of delivering her to France under the convention with that nation. Are not these facts? Are France and the United States the same nation? Gentlemen can discover no other way of getting rid of this resolution, but by declaring an identity between them. Were we to call upon the Executive to say why the *Berceau* was delivered to the French Government, gentlemen might complain; but we simply ask a fact.

If it shall be replied that the repairs were made, in order to deliver her up to France, I am not prepared to say they were improperly made. After the answer is given it will be in season to judge. Our object in making this motion is no secret. We wish to know from what fund the money has been taken, or whether from any fund. Holding the purse-strings of the nation, we have a right to be acquainted with these circumstances; that if public money has been properly disbursed, we should be satisfied of the fact; if wrongly disbursed, that such fact also should be known to us.

Mr. S. SMITH.—So far from there being any

secret in this business, I read in a late debate, from documents then in my possession, whatever related to it. The arguments of gentlemen show that the resolution should be suffered to lie on the table. If it is sent to the Secretary of State, he will reply, that he knew nothing about the business. It does not properly come under his department. Why, then, refer a business to him which he cannot elucidate, especially when his ill state of health should recommend forbearance? The statement of the gentleman from Delaware is not entirely correct; indeed, I am inclined to believe with him, that he received it at a dinner table. I believe the whole letters will be exhibited, and that there is not the least secret in the whole affair. It is true, that the last order was given by me. But before issuing that order, it was submitted to the former Secretary of the Navy, and the letter accompanying it was drawn by his advice and with his approbation. The fact is, that at that time I was engaged in rendering some assistance to the department, until it should be filled by a permanent officer, and that the place was offered to me and other gentlemen. That letter, to which I have just alluded, gave instructions to put the *Berceau* in the precise situation she was in at the period of capture.

Mr. DANA said there might be an error in the style of the resolution, and it might be proper to substitute Secretary of the Navy in the room of Secretary of State.

Mr. GILES.—The gentleman from Delaware says, that the information to him by the late Secretary of the Navy differs essentially from that given by me. I believe that is not the case. The information given to me was not verbal, but written. The only difference between the gentleman and myself is, that he states that the late Secretary did not give the orders, whereas I stated that he had advised and approved them on a new Secretary coming into office.

Mr. BAYARD.—I certainly thought there was a material difference between our statements. I understood that gentleman (Mr. GILES) to have said that the orders were actually given by the former Secretary. I may have forgotten what he said; or he may have forgotten, and may deem himself at liberty to retract his expressions. We are now told that the late Secretary only advised and approved. I was correct, therefore, in saying the orders were not given by the late Secretary.

I cannot say with certainty what the private opinion of the former Secretary is. I am, however, rather inclined to think, though I express it doubtfully, that his opinion was, that the repairs were proper.

The gentleman from Maryland says my statement is not correct, and adds, it may have been obtained at a dinner table. But it is perfectly immaterial whether obtained at a dinner or a breakfast table. That gentleman, though from his situation better acquainted with the circumstances of this transaction than any member on this floor, has not invalidated any part of my statement.

I do not, however, wish to inquire into the pri-

APRIL, 1802.

French Corvette Berceau.

H. of R.

vate opinions of the Secretary of the Navy, either those of the past or present officer. I do not know what they have to do with the subject before us. If the orders were given under the present Secretary, or the past Secretary, still the President is answerable for them, and it is totally immaterial who was consulted on the occasion. Our only wish is to get this information, and why we are denied it I am at a loss to know.

Mr. RANDOLPH moved to postpone the resolution till to-morrow. He was not disposed to deny gentlemen any proper information that they might want. But gentlemen have so repeatedly asserted that there was a disposition in those opposed to taking up this resolution, at the present time, to deny all information.

Mr. BAYARD said the gentleman was mistaken; he said no such thing.

Mr. RANDOLPH.—The gentleman asked, why evince this disposition to deny information? Does not the House recollect the words? We have so often heard from gentlemen what are and what are not precedents that have taken their rise in this House, that sometimes I have been tempted to doubt whether I have heretofore been a member of the House. But I will refer to a case where information was asked and denied; such information as, in the opinion of those who required it, was calculated to criminate the Executive; and on the refusal of which another resolution, approbatory of the conduct of the President, was grounded. Gentlemen on that occasion declared that they wanted information to form their judgments; yet the information was denied.

[Mr. RANDOLPH referred to the case of Jonathan Robbins.]

I am not, however, for imitating gentlemen in refusing information. But I think it improper to act on a minute's notice. If the information asked be so important, I see no reason why a motion for it was not brought forward at an earlier day. I see no reason for demanding us to act *instantly*, at a period when important business is pressing upon us. I should, indeed, wish to see the practice introduced of notice being given of all business of importance. It is known, that though not strictly conformable to the rules of the House, committees do sit during its session. Without such notice, opportunities may be watched, and seasons seized for unfairly carrying a favorite measure.

Mr. BACON hoped the consideration of the resolution would not be postponed. Gentlemen say there is nothing so intricate in it. It only requires facts to be exposed. They disclaim all relation to views. Now, what facts do gentlemen want? I verily believe the official documents before the House display every fact in relation to the business; one fact is, that the *Berceau* has been repaired; another is, that she has been delivered to the French Republic; and from these facts it is for us to infer the design.

Mr. S. SMITH said he was against the postponement. He wished to meet the object fairly. He hoped, therefore, the gentleman from Connecticut would withdraw his motion, or that the House would reject it, for the purpose of introducing in

its room one which he held in his hand, and which he read, (calling upon the Secretary of the Navy for all papers respecting the repairs of the *Berceau*.)

Mr. GRISWOLD.—I hope the consideration of the resolution will not be postponed. There is no perplexity in the resolution proposed by me; it is even more simple and correct than that of the gentleman from Maryland. By the Messages received from the President, this subject appears to be before the Department of State.

Mr. RANDOLPH withdrew his motion of postponement. He said he would only observe, that all the information gentlemen wanted had been already given. Both the gentlemen from Connecticut and Delaware were members of the Committee of Ways and Means. They cannot surely have forgotten the answer of the Secretary of the Navy to a letter from the Secretary of State, who had been applied to on the subject by the Committee of Ways and Means. The amount of that answer was, that the *Berceau*, being a vessel of war of the United States, was repaired, and the expenses of repair derived from the fund provided for the repairing national ships. Gentlemen, therefore, must know, not only the amount of the repairs, but also the fund from which those repairs were paid for.

Mr. BAYARD believed the better way would be to call upon the President to decide whether the repairs were made on the *Berceau* as a national ship, for the purpose of her delivery to the French; and, also, to lay before the House the papers, &c.

Mr. B. said the gentleman from Virginia, (Mr. RANDOLPH,) had observed that there was one case in which the House had requested information, and that was the case of Jonathan Robbins. He hoped the gentleman from Virginia, (Mr. RANDOLPH,) would excuse him for correcting his statement, which he would do by appealing to the Journals, from which it would appear that the only information sought was received and acted upon. He remembered, too, that the information required by the motion of a gentleman from New York was of such a nature as to wound the feelings of the then President, inasmuch as it was contemplated as the ground of severe crimination; yet the information was not refused.

[Mr. B. here read extracts from the Journal in the case of Jonathan Robbins.]

He said he hoped the same course would be pursued on this occasion that had been on that.

As to the information being before the Committee of Ways and Means, that was altogether immaterial, since the information possessed by that Committee was not in the possession of the House; but the information possessed by that Committee does not go to the extent of the resolution; it only goes so far as to ascertain the amount of expense and the fund from which it had been drawn; whereas the object of this resolution is to ascertain whether the repairs were made for an armed national vessel, or for a vessel to be delivered to the French under the stipulations of the convention.

Mr. RANDOLPH said he did not expect that any

H. OF R.

French Corvette Berceau.

APRIL, 1802.

difference of opinion would have been manifested on the facts stated by him to have taken place in the case of Jonathan Robbins. He did not state those facts with any view to the drawing them into a precedent on this occasion for refusing information. God forbid! that this or any other of the transactions attending that case, should be called up by him as a precedent to influence the proceedings of the House. But he had stated it as a fact, to demonstrate the inconsistency of gentlemen, that information contended to be necessary by several members on this floor had been denied by the majority.

[Mr. R. here read extracts from the Journals, to show that in the case of Jonathan Robbins, a resolution had been offered for obtaining a certificate of the proceedings of the Federal court, relative to the delivery of Jonathan Robbins; which resolution was rejected—yeas 44, nays 57.]

Mr. R. said that from the Journals it appeared that among those who voted in the negative were the honorable gentlemen from Delaware and Connecticut, (Mr. BAYARD and Mr. GRISWOLD.) He said he had never asserted that information asked in this case from the Executive had been withheld by the Executive; but he had said that information decisive, perhaps, of the important question before the House, had been withheld by the vote of the majority. The proceedings of the court, and the evidence there given, were the pivot on which the case turned, viz: whether Jonathan Robbins was a citizen of the United States or not.

Mr. GRISWOLD agreed to modify the motion by introducing Secretary of the Navy, in the room of Secretary of State, and to add to his original motion, the words calling for papers, as proposed by the gentleman from Maryland, (Mr. S. SMITH.)

Mr. S. SMITH said, he then moved to strike out all the resolution, excepting that which called for papers.

Mr. T. MORRIS called for the yeas and nays on striking out.

Mr. NICHOLSON.—I shall vote for the amendments. This is the first time I have ever heard public officers called upon to assign their motives of action. That the Berceau has been repaired, and \$32,000 expended, is known to the gentlemen, and not denied by us. Gentlemen do not pretend to say they are not acquainted with these circumstances. But they are not satisfied with a knowledge of these facts, but offer a resolution requiring the Secretary of the Navy to do a thing not in his power to do. The fact is he was not in office when these repairs were made. Now, what was the view with which these repairs were made by the former Secretary of the Navy, or by my colleague, who was in the temporary discharge of the duties of the Navy Department, it is impossible for the present Secretary to say. But even if the information could be furnished by the present Secretary of the Navy, I cannot see the propriety of calling upon him for his motives, which cannot vary the propriety of the measures. The ship belonged to the United States; there existed a fund out of which vessels of the United States

are repaired; out of this fund the Berceau was repaired. Now, where can be the use of inquiring into the motives of the Executive? We know that the Berceau was delivered to France repaired. If improperly delivered, that will form a subject of distinct consideration. The gentleman from Connecticut says he wants information. All the information the gentleman desires is already before us, derived from the report of the Secretary of the Navy. Gentlemen who support this resolution might as well call upon the President to inform them with what view he has recommended certain things to our attention in respect to the Judiciary, the internal taxes, and other subjects.

Mr. S. SMITH said, that though he thought the call now made improper, yet being willing to give gentlemen all the information they desired, he would withdraw his motion to strike out, suggesting the propriety of amending the resolution by introducing the words "to purchase," before the word "repairs."

Mr. GRISWOLD said he had no objection.

Mr. EUSTIS said he hoped the amendment would go further, and state the "time of sale, purchase, and repair;" then the whole business would be before us. This was the more important, as a very material fact was involved in the sale.

Mr. GRISWOLD had no objection to making the resolution as extensive as was desired by the gentleman from Massachusetts. Gentlemen are not correct in saying this resolution is a demand of motives. I will mention a parallel case in which gentlemen will not say that similar information will not involve important, and even necessary, facts for us to know. Suppose an appropriation is made for cannon ball for the Army, and one also for the Navy—a purchase of this article is made in the interior of the country—it is necessary to know for which department the purchase is made, that we may determine whether the money disbursed is taken from the Army or Navy fund. So, in this case, it is equally necessary that we should know whether the Berceau was repaired for the service of the United States, or to be delivered up to the French nation, that we may determine whether the proper fund has been drawn on.

Mr. GILES said, that though he concurred with the gentleman from Maryland, that this was an inquiry into motive, and though it appeared to him to be a pernicious precedent—one which might lead to improper purposes—yet to satisfy the zeal of gentlemen, he was disposed to vote for it. He said he had never felt any disposition to deny useful information to the members of this House, or to the people. So far from that being the case, he had sometimes voted for information, to satisfy the wishes of gentlemen, even when that information was already on the table.

The case put by the gentleman from Connecticut (Mr. GRISWOLD) was not apposite. It would have been apposite had there been connected therewith an inquiry into the motives of the Executive in the purchase. As well might we, said Mr. G., demand of gentlemen their motives for this resolution; we might say it was designed to

APRIL, 1802.

French Corvette Berceau.

H. OF R.

excite popular clamor—not that he believed it would have that effect, for he knew that the more the actions of the Executive were examined the more they would be approved.

There was one insinuation often made, not only here, but throughout the United States, that a moment's reflection would dissipate—an insinuation that could not produce the effect intended—an insinuation that the measures of the Executive, in the delivery of the *Berceau*, were grounded on a disposition to favor the French Republic. Mr. G. said, he would ask whether such an insinuation was not the most vain, unfounded, and irrational, that could be conceived? He would beg gentlemen who fostered it, to turn their attention to the situation of the French Republic, and they would there see whether there was the smallest probability, or least possibility, of the existence of any sympathy between the Executive of France and the American Administration; they would see whether, in their principles, they agreed in a single point. It may not, perhaps, be strictly proper on this floor to say anything of the leaning of our Executive to European Powers; but, on this occasion, it might be permitted to say that there was no analogy or sympathy between the Executive of the one country and the other. There could be no analogy or sympathy while the measures of the two Administrations were so essentially different. Mr. G. said, he believed the Executive entertained no sympathy or predilection for any European Powers; but there was not a reflecting man in the United States, in France, or in the world, who marked the course of the two Governments of the United States and France, who would not mark the essential difference between them. All this, Mr. G. said, he did not express from any kind of authority, or from personal acquaintance with the Executive Magistrate, but from the reflection of his own mind.

Mr. BACON moved for a division of the question. He was in favor of that part of the resolution which called for papers, but opposed to that part which related to the design of the Executive.

Mr. T. MORRIS moved so to amend the resolution, as to make it read that the President be requested to inform this House—with the variation at the close—and to direct the proper officer to lay before the House papers, &c.

Mr. GRISWOLD agreed to this modification; when, on motion of Mr. NICHOLSON, the House adjourned—yeas 55, nays 30.

TUESDAY, April 6.

An engrossed bill further to alter and establish certain post roads was read the third time, and passed.

An engrossed bill for the relief of Paolo Paoly was read the third time, and passed.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his report on the petition of Arthur Morrison, referred to him by order of the House, on the fourth ultimo; which were read, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill to amend an act, entitled "An act for the relief of sick and disabled seamen," and for other purposes; which was read twice, and committed to a Committee of the whole House on Thursday next.

The House resolved itself into a Committee of the whole House on the bill for the relief of Thomas K. Jones which was reported without amendment and ordered to be engrossed and read the third time to-morrow.

On motion it was

Ordered, That the Committee of the whole House to whom was committed, on the thirty-first ultimo, a letter from the Secretary of the Treasury, accompanying sundry documents relating to the claim of Comfort Sands, and others, be discharged from the consideration thereof; and that the said letter and documents be referred to Mr. BACON, Mr. THOMAS, Mr. GODDARD, Mr. HANNA, and Mr. CLAY.

CORVETTE BERCEAU.

Mr. GRISWOLD said, that in order to meet the ideas of gentlemen who had spoken yesterday, he would withdraw the motion he had made, and in the room thereof propose the following:

"*Resolved*, That the President of the United States be requested to direct the proper officer to report to this House, whether the sum of 32,839 dollars and 54 cents was expended for repairing the corvette *Berceau*, after it was determined to deliver up the same to the French Government, agreeably to the stipulations of the convention between the United States and France; and to lay before this House copies of all papers and documents which relate to the sale, purchase, and repairs of that vessel."

Mr. GILES moved to strike out that part which related to the purpose of the Executive. He said he wished to carry the point of information as far as any person; but he believed that going the extent of the motion was going beyond the powers of the House; as he believed that in the present case the provisions of the treaty were merely of an Executive nature, and the repairs made of the same nature. He had himself, in his personal capacity, no objection to the President fully developing his motives, believing those motives to be highly honorable; but he did not wish unconstitutionally to interfere with the Executive Department. We have heretofore heard much about the independence of the departments and particularly of the Executive Department. He believed that during the period when a description of citizens now the majority, were in the minority, and who were then branded with the name of disorganizers, no such motion had ever been made by them. He knew not the views of gentlemen, who now made this motion; but it appeared to him the most disorganizing motion that had ever been made in that House.

Mr. G. said he held in his hand a paper which showed that which he had yesterday stated was perfectly correct. He would therefore, again remark that the business had taken its direction under the former Administration, and had been

H. OF R.

French Corvette Berceau.

APRIL, 1802.

only continued in that direction by the present Administration.

Mr. G. concluded by moving to strike out, "whether the sum of 32,832 dollars 54 cents was expended for repairing the corvette *Berceau*, after it was determined to deliver up the same to the French Government, agreeably to the stipulations of the Convention between the United States and France, and."

Mr. BACON believed the resolution required explanation. It indicated, perhaps, too great jealousy of the motives of the Executive. He was at a loss to know what was referred to by the words "after it was determined;" by whom determined? By the President of the French Republic?

Mr. GRISWOLD trusted the amendment would not prevail. The French corvette has been delivered up. This is a fact. The gentlemen has expounded this to be an Executive act. The vessel could not have been delivered without the determination of the Executive. Now, we are not for inquiring into the motives of the President. We state the facts, that the repairs have been made, the vessel has been delivered, and the determination must have taken place before the delivery; we ask then why gentlemen refuse us the knowledge of the fact whether the repairs were made after it was determined to deliver the *Berceau* to the French? This is a fact; it is not a motive. These 32,000 dollars are public money, applied to the support of the Naval Establishment. We wish to know whether this sum has been properly or improperly applied to naval purposes as appropriated by law, or whether it has been applied to the execution of a treaty. That that treaty ought to be carried into execution cannot be doubted. This we all admit. But we say that this money ought to be taken from its proper fund. I do not see why gentlemen deny this information. Our only inquiry is into certain facts; and I have never known such an inquiry prohibited. We are not inquiring into the secret motives of the Executive for carrying this treaty into effect before it was ultimately ratified by France. That measure was probably correct. The fact is well known, and yet I hear no gentleman condemn it.

The objections, therefore, of gentlemen are incorrect. We are not for inquiring into the secret motives of the President; his motives were undoubtedly virtuous and honorable, and his measures may have conduced to the welfare of the nation. But we simply want the fact whether the repairs were made before or after the determination to deliver the corvette to the French. This House has a Constitutional right to inquire into the faithful expenditure of the public money. We appropriate money for a marine barracks, and we find a Secretary of the Navy building with the public treasure an extensive house on his own estate; have we not a right to inquire for what purpose the money is applied?—to know whether the appropriations made by law have been observed? This is all we now desire; that we may ascertain whether the money laid out on the *Berceau* has been applied to naval purposes, or to other purposes. This we have a right to know, and I think

gentlemen cannot refuse it. Mr. G. concluded by asking for the yeas and nays.

Mr. T. MORRIS was astonished gentlemen interfered to prevent information being given to the House. What! Have we not a right to know how the public money has been applied? Have we not a right to know how these 32,000 dollars have been expended? We know they have been expended; we know there is no fund out of which the money could have been taken. Have we then not a right to inquire into the circumstances attending the disbursement, and shall we be told that in making this inquiry, we are prying into Executive secrets! This is indeed going farther than has ever been done before. The gentleman from Virginia says, the conduct of the Executive will redound to his honor—why not then disclose the circumstances attending that conduct.

Mr. DAVIS.—Gentlemen were all day yesterday employed in framing a resolution; sometimes proposing one amendment, and then withdrawing that amendment to make room for another; and now, when it is nearly fitted to the mind of the whole House, it is withdrawn by the mover (Mr. GRISWOLD) and another substituted in its place, and we are again to occupy a whole day in talking about it. For what is this proposed? Are we about to engage in any Legislative act that renders it necessary that we should have the information it asks? If we are not, I cannot see the propriety of so much useless discussion about it. I therefore, move that its further consideration be postponed till the third Monday in November; and I hope those who are for going on with the public business will agree to postpone it till that time, and let those gentlemen, whose curiosity leads them to pry into the motives of the Executive, go to the public offices, and there obtain the information they say they want, while we are progressing in the public business.

Mr. LOWNDES said he was one of those who the most anxiously wished the public business despatched. But he knew no business so important as that which respected the expenditures of the public money. He did not conceive that one solitary objection could be urged against the motion. Gentlemen say, we are calling upon the Executive for his motives; but, Mr. L. said, he did not understand the English language, if this resolution involved an inquiry into motives. If the answer of the Executive shall be that these repairs were made in order to restore the *Berceau* to the French, will that be anything like a motive? Is it not a simple and abstract fact? Suppose the answer given shall be, that the *Berceau* was repaired that she might be employed in the service of the United States, will that be a motive? It will be a simple abstract fact; gentlemen, in truth, to resist the motion, are driven to the shift of saying, we are forced into Executive motives.

Mr. LOWNDES said, he was also anxious that the resolution should prevail, for the reason assigned by a gentleman from Massachusetts, (Mr. EUSTIS,) who had stated, that some important facts were involved in the business. That gentleman, and gentlemen on his side of the House,

APRIL, 1802.

French Corvette Berceau.

H. OF R.

may be acquainted with these facts from the facility with which they are enabled to get information from the Executive offices; but are not we entitled to the same information derived from official sources?

The gentleman last up asks for what purpose is this information wanted?—is it intended as the ground of a Legislative act? The proper answer to such a question is, that we must have the information first. If the repairs were made to fit the *Berceau* for the public service, Mr. L. said the expenditure was unwarrantable; and if they were made in order to deliver her to the French, he would say, the expenditure was without law. The gentleman from Virginia has said, that he is not disposed to be economical of information, but that his economy would be directed to the expenditure of public money. If so, he ought not to oppose this motion.

Mr. GILES said he had never been disposed to be economical of information. His only object at present was to be economical of an invasion of the Executive Department. He was not disposed to deny an atom of information that was required to enlighten our minds; and the resolution, as modified by his amendment, would give gentlemen all the information that is proper to be furnished. The gentleman from South Carolina says he has not the same facility with us of obtaining information; and he immediately goes on to decide on the conduct of the Executive, and he says that conduct is not lawful. But, on inquiry, it will be found that both the past and present Administration believed there was a law which warranted all the steps taken.

Gentlemen were informed yesterday, that the *Berceau* was purchased under the old Administration. This is a fact. It is also a fact that the purchased money was paid out of the contingent fund of the Navy Department, and that the repairs were made out of the same fund. Gentlemen say they wish to know the purpose, and not the motives of the Executive, as if purpose did not involve motive.

It had been truly said, there was no precedent for such a motion. If there were one, gentlemen would, without doubt, have brought it up. The most notable precedent that bore any application to the present case was that under the British Treaty. On that occasion we only asked the President to lay such information before the House as in his opinion might be disclosed without inconvenience to the nation; and yet for this reasonable request we are branded with the reproachful epithet of disorganizers. But now gentlemen, who were then so liberal in their reproaches, call upon the Executive to state—not any particular information in his possession, but the purpose for which he did certain acts. Notwithstanding the distinctions of gentlemen, we do understand the English language very differently from them if they do not admit that the term *purpose* includes in it motive and inducement.

However, if gentlemen will examine the resolution as it stands, after striking out the first part of the sentence, they will find that it will give

them all the information the President can furnish from which any inferences can be drawn.

Mr. G. believed the purchase of the *Berceau* had been made under the old Administration; he believed it had also been made out of the Navy fund. For what purpose she was purchased was not specified at the time; and it would have been improper if it had been specified. After being purchased, she had been dismantled; and it was to this circumstance that the consequent embarrassment was to be ascribed. The repairs were only such as to place her in the situation she was in when captured. All this information will be derived from the resolution which shall remain, after the words are stricken out, which I have moved to strike out. Is not this information enough? Shall we go on and say to the Executive, why did you this or that act? Mr. G. was of opinion that it would be improper to reduce him to the necessity of refusing our request, which he believed he would and ought to do, as no right to make the request belongs to us. He at the same time declared himself as averse to concealment as any man. He concluded by saying that he was happy to find gentlemen on the opposite side of the House actuated by so lively a spirit of inquiry; he hoped they would continue to be animated by the same laudable spirit, as in this way the Government would be kept pure. The principle of giving all useful information was that of the present Administration, and he trusted it would be extensively practised, though he was not for carrying it so far as to interfere with the right of the other departments.

Mr. LOWNDES.—The gentleman has* misconceived me. I did not say there was no legal appropriation for repairing the *Berceau*. This we cannot know until we shall hear with what view she was repaired.

The gentleman says the order to repair was given under the former Secretary of the Navy. But it is quite immaterial to me and to the House under what Administration it was given. It is possible it might have been given by the late Secretary of the Navy, and notwithstanding be the act of the President, as that officer continued in the place for some time, under the present Chief Magistrate.

Mr. BACON required to know what the original resolution could precisely mean? What can the phrase *determination* refer to? Does it mean after the Executive had made up his mind to sign the convention, after he had actually signed it, or after the Senate ratified it? Surely it is so vague and inexplicit that it requires explanation before it is adopted.

Mr. S. SMITH said, he did not rise to take a part in the debate; but barely to notice a remark made by the gentleman from Connecticut (Mr. Griswold;) a remark not probably meant to have the effect which it might have, if suffered to pass unnoticed, upon the public mind. He alluded to that part of the gentleman's speech, which put the case of a Secretary of the Navy building a marine barracks upon his own estate. Lest an unintentional impression should be produced by this re-

H. OF R.

French Corvette Berceau.

APRIL, 1802.

mark, Mr. S. said he would observe that no such thing had occurred in relation to the Secretary of the Navy; and that the site on which the marine barracks was built was in the City of Washington, and had been purchased from the Commissioners of the city.

Mr. GRISWOLD said he had not the least allusion to any such thing having occurred. He had only used it as an argument to them, that such an event might occur.

Mr. G. thought it important that this information should be obtained for two purposes. The first was, in order to pass a proper appropriation act on the subject. Gentlemen would recollect that we had replaced the amount of the purchase money to the Navy fund; if the repairs were made from the same fund, the amount ought to be replaced to the proper fund. In the second place, it is our duty to inquire into the due expenditure of public money. The Constitution requires that this shall be done; and if it shall be doubted whether the Executive has committed a mistake in the expenditure of the public money, the subject ought to be inquired into. If it shall appear that the Executive has committed a mistake, it does not follow that the Executive is to be criminated; the Executive cannot be criminated; but in such case there ought to be an appropriation subsequent to the expenditure, to cover it. This has been often done, viz: in the Western Insurrection, more money was expended than was authorized by law; but the expenditure was necessary, the Legislature deemed it right, and it was covered by a new law.

Mr. G. wished that the gentleman from Virginia had stated more clearly how we are impeaching the motives of the President by calling for this information. We say it is a fact that the *Berceau* was delivered to the French nation, that the expense of repairing her before delivered was \$32,000; and all that we wish to know is whether this expense was incurred before or after the determination to deliver her.

Mr. G. said he would put a case. Suppose a certain sum of money should be appropriated for naval purposes. The treaty-making power resides in the President. Suppose he forms a treaty which stipulates the giving to a foreign Power a thirty-two gun ship. Suppose, for the purpose of carrying into effect this stipulation, the President takes the money necessary to build this ship from the Navy fund. Would it not be proper in Congress to inquire from what fund the money is taken? The Executive had actually stipulated to deliver to the Dey of Algiers, and had built for that purpose, a thirty-two gun frigate. Yet it had not been considered that the money for that object could be taken from the Navy fund; but that it was proper to take it from the fund created to defray the expenses of foreign intercourse.

This proposed inquiry is not only right, but it is our duty to make it, as it may be necessary to pass a law covering the expenditure. He did not, by this motion, mean to impeach the motives of the President. But when the information we request is received, we shall be able to judge whe-

ther the President has observed or transgressed the appropriation law, and whether this has been the act of the former or present President.

Mr. T. MORRIS had said that \$32,000 had been laid out, without a dollar being appropriated. This he had stated on the authority of a paper exhibited by a gentleman from Virginia. It did appear from the letter of the Secretary of the Navy that the *Berceau* was purchased and repaired in order to be delivered to the French Republic; and if the purchase and repairs were made for this purpose, he did say the money had been expended without any appropriation by law.

Mr. SMITH.—It has been truly said that no demand similar to the present has ever been made—nor ought such a demand now to be made. I hope, therefore, that the amendment will obtain; and that we shall agree to that part of the resolution which is proper. We have a right to call for papers, and I hope we will exercise that right; but we have no right to demand from the President a knowledge of his motives, and I hope we shall not require to know them. Gentlemen say we refuse them information. It is, however, a little extraordinary, how differently the same gentlemen think at different times. In 1796, a proper demand was made and refused. The President was requested to lay before this House the instruction given to our Minister who negotiated the British Treaty; with the express reservation that he should withhold such parts as it be improper to communicate. Yet the request was not complied with; and if gentlemen will examine the journals they will see that the names of the gentlemen from Delaware and Connecticut (Messrs. BAYARD and GRISWOLD) are among those who were against granting the information.

Mr. ELMER said he hoped the postponement would not prevail. He was so solicitous to get information, that he would agree to almost any mode of obtaining it: though he thought the House had nothing to do with the motives of the President, and that, of consequence, the amendment ought to prevail.

Mr. S. SMITH.—The gentleman from Connecticut has stated a case, in his opinion, analogous to the present—that of the frigate built by a former President for the Dey of Algiers. I remember well that that vessel was built without any authority derived from law. I do not recollect whether at the next session of Congress we appropriated money for that object; but I remember that though it was said to be a considerable exercise of power on the part of the President, it was thought on the whole to be right, though there was no appropriation for it.

I remember too that a former Secretary of War did, unauthorized by law, build two galleys on the Ohio which cost \$20,000, for which there was no appropriation; but the expenses of which were taken from the Quartermaster's department; and all this was done without any investigation.

With respect to the purchase of the *Berceau*, that measure took place on the 19th of December. Gentlemen say it was under the Treaty. But the truth is, that no official information of the treaty

APRIL, 1802.

French Corvette Berceau.

H. OF R.

had then arrived. Notwithstanding this, the former President had directed the purchase, and perhaps very wisely. Here then was an expenditure without any appropriation other than that of the Navy fund. Of consequence, whatever sum was applied to the repairs of the *Berceau* will be charged to this fund, as well as the sum expended in the purchase.

Gentlemen too will find, notwithstanding all they have said, that no order for repairs has ever been issued; but only an order to inquire into the situation of the vessel, as to arms, provisions, and stores, at the time of the capture, and to replace everything as existing at that time.

The yeas and nays were then taken on postponing the consideration of the resolution to the third Monday in November, and lost—yeas 4, nays 75, as follows:

YEAS—Thomas T. Davis, Daniel Heister, William Hoge, and Josiah Smith.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Thomas Boude, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Seth Hastings, William, Helms, Archibald Henderson, William H. Hill, James Holland, David Holmes, Benjamin Huger, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., Nathan Read, John Smilie, Israel Smith, John C. Smith, John Smith, of New York, John Smith of Virginia, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Killian K. Van Rensselaer, Lemuel Williams, Robert Williams, and Henry Woods.

Mr. GILES' amendment to strike out recurring—

Mr. BAYARD said, I hope the amendment will not prevail. I am surprised to find that, notwithstanding the most unlimited professions of gentlemen to give information, under the most nice and subtle distinctions, they now tell us we are calling for information which we have no right to possess. It has been said over and over again that the acts of this House do not furnish a precedent for such a refusal. Gentlemen in reply have referred to several cases. Among these they have referred to the case of the *British Treaty*. What was the conduct of the House on that occasion? Did they not enter a resolution calling upon the Executive to give information. It is true the Executive refused to give it. So, on this occasion, let us do our duty, and if the Executive is not possessed of the information we seek, or thinks it improper to give it, he will say so. Gentlemen say they have no doubt but that the conduct of the Executive will, on investigation, appear laudable. If so, why refuse to the Executive the opportunity

of exhibiting documents which have convinced the honorable gentleman, and such as will convince the whole American people of its rectitude? For my part, I am not prepared with gentlemen to applaud the conduct of the Executive; respecting the propriety of his conduct, I am neither ready to doubt nor to believe. The honorable gentleman from Virginia (Mr. GILES) may be prepared. He may have access to information which I have not. If this information be of the kind he represents, why not furnish it, that the whole American nation may possess the same opportunity of judging that he possesses?

It is said that we have no right to inquire into the motives of the Executive. We do not wish to inquire into his motives; we wish facts. We want to know whether the Executive did or did not determine to deliver up the *Berceau* at a certain time. Is this a motive? We call it a fact. The truth is, that under this pretext, if at any future time we call for information, gentlemen may charge us with seeking into motives, and thus resist our reasonable request.

This determination to deliver the *Berceau* does or does not appear on the face of the papers before us. If it does appear, why will gentlemen trouble themselves in resisting a request at least so harmless? But if it does not appear on the face of the papers, is it not proper to have a direct communication from the Executive? This information is most important to us, who wish to know whether the *Berceau* was repaired as a French or American vessel; that we may know whether the price of those repairs has been taken from a legal fund. If she was repaired as an American vessel, the expenditure was legal; if as a French vessel, it was not legal. Will gentlemen say it is unimportant to determine whether the legal application of money has been observed? This information is also important to determine the propriety of the extent of the repairs made. If the *Berceau* was repaired as an American vessel, the extensive repairs may have been proper and reasonable; but if she was repaired as a French vessel, they appear to have been wanton and extravagant. To make such repairs we were not bound by treaty. I will agree that we were bound to restore her in the state in which she was brought in, but not in the state in which she was previous to the engagement; because that engagement was a legitimate act, as we were then in a state of war. We were simply bound to place her in the condition she was in when the treaty was formed; and I apprehend that would not have cost \$32,000.

Mr. BACON.—Gentlemen are correct in denying the similitude of any precedents to the present resolution. I do not believe that a similar precedent can be found on the journals, or anywhere else, except in those Popish countries where there are inquisitions. Gentlemen disclaim inquiring into the motives of the President. But does not the determination they wish to arrive at the knowledge of, involve motive? And of whom? Of the President. The only object then of this motion is to find out the secret design of the President. For such an inquiry, can you find any precedent extant

but in countries where there are established inquisitors? And this is a foreign authority that I should scarcely expect the gentlemen to quote in this House. I repeat it, this resolution can mean nothing else than to ferret out the secret intentions of the President: and gentlemen dare not face these remarks by saying with what intention it is really made.

Mr. GODDARD said he did not know that a free country could furnish a precedent of such a refusal; but he believed that no country could long remain free that did furnish such a precedent.

Gentlemen say much about the secret doings of the President. Mr. G. said he did not before know that there were any such.

Gentlemen say, you may call for all official papers, and you ought to be satisfied with them. But suppose your public officers expend the public money, without keeping records of the expenditure, would it not sound strange that you should be denied the right of calling upon them for other sources of information in their power to furnish? Suppose the President now called upon to say wherefore the *Berceau* was repaired, would that be improper?

Mr. DANA.—The proposition to amend the resolution offered by my colleague appears to be founded upon misapplication. The plain object of the resolution is to ascertain the fact whether the *Berceau* was repaired as an American or French vessel. This is the proper and sole object. As to the real intention of the Executive, I should not suppose gentlemen would be afraid to avow it. How can we determine this point, which must depend on the facts for which we ask, without first receiving them from the Executive? In the proceedings on the British Treaty, the case was different. In that case the call was for information respecting the negotiation of a treaty; this call respects the execution of a treaty, which we can know nothing of, but through the Executive. The determination with which we wish to be acquainted must be a Governmental act; as to any secret opinion confined to the President, that could not be contemplated by the resolution. The gentleman from Massachusetts (Mr. BACON) asks whether the determination we wish to possess is that of the American or French Government? I will answer him by saying I had not imagined that any gentleman could have supposed that the French Government would have delivered up a vessel itself.

For myself, I think it proper to call for this information, not that I would be very critical with the Government. But here is an expenditure of \$32,000, on the face of it questionable. It is proper then to get information that will enable the people to judge for themselves. For my own part, I have had doubts of the propriety of the expenditure, either from the fund for foreign intercourse or from the Navy fund. I do not mean, however, to give this as my prevailing opinion; nor would I wish, in this stage of the debate, to implicate censure upon the Executive. If it shall appear on inquiry, when we have all the information before us, that the Executive has acted right in this trans-

action, I am one of those who shall deem it my duty to put down all the clamor that has been raised throughout the nation; and even if it shall appear that the President has acted substantially right, though he may have deviated from the strict letter of the law, I would wish to sanction his measures by a new law.

Mr. GRISWOLD.—I rise to advert to the decision of the House in the case of the British Treaty. I did not suppose that that case would have been attempted to have been assimilated to this. The ground on which the resolution then proposed was founded, was, that the House of Representatives had a right to participate in the treaty-making power; and on that ground it was opposed. On that ground too the information asked from the President was refused.

[Mr. G. here quoted the President's remarks in reply to the resolution of the House.]

Is that the case here? Do we claim a right to interfere by giving our assent to, or in executing the treaty with France? No; we only ask for the single fact whether the repairs of the *Berceau* were or were not made before it was determined to deliver her to the French. We ask this, that if it shall appear there was no existing appropriation, the expenditure may be covered by a new law, as has been the case in all instances where expenses have been incurred without existing appropriations.

The question was then taken by yeas and nays on the amendment of Mr. GILES, and carried—yeas 49, nays 27, as follows:

YEAS—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmen-dorf, Ebenezer Elmer, William Eustis, William B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, William Hoge, James Holland, David Holmes, George Jackson, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro jr., David Thomas Philip R. Thompson, Abram Trigg, John Trigg, Philip, Van Cortlandt, John P. Van Ness, and Robert Williams.

NAYS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, John C. Smith, John Stanley, John Stratton, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, and Lemuel Williams.

Mr. DANA moved to suspend the resolution, by requiring a statement of the sums paid to the officers and men of the *Berceau*, together with all papers relating thereto.

Mr. GILES.—The gentleman from Connecticut says, the precedent in the case of the British Treaty does not apply, as the resolution then passed related to the negotiation and not to the execution of the treaty; but the fact is, that resolution did

APRIL, 1802.

French Corvette Berceau.

H. OF R.

relate to the execution of a treaty, as the treaty was already finally negotiated. Mr. G. said, he had introduced this observation to show that there was no analogy whatever between the passage of that resolution, or an agreement to this resolution as submitted by the gentleman from Connecticut, (Mr. GRISWOLD.) But that resolution was precisely like this, as proposed to be altered, with one reservation; in the former case it was proposed that the President should withhold all such information as he should think improper to communicate, whereas in the present case there is no such reservation. Yet the gentleman from Connecticut, (Mr. GRISWOLD) as appears from the yeas and nays, was, in the former instance, against the call. The fact is, notwithstanding the remarks of that gentleman, there was nothing in the resolution agreed to by the House, in the case of the British Treaty, that involved the claim of the House to participate in the treaty-making power. We now conform the present resolution to that then offered, except that we do not reserve, as we did then, the right to the President to withhold a part of the papers; that is, we give to gentlemen all and even more, than they then denied us. The gentleman from Connecticut (Mr. GRISWOLD) on that occasion made a handsome speech to show that we did not possess a Constitutional right to call for papers; but he now tells you, that you have not only the right to call for papers, but you have the additional right to call on the Executive for his purposes.

Mr. G. begged leave to know whether this change of conduct evidenced that respect for the Executive department which gentlemen had heretofore so often professed? He also begged leave to compare the spirit of those gentlemen, with whom he then acted, with the spirit of other gentlemen now, and to ask whether the spirit then manifested was not a spirit of forbearance, and one which gentlemen, on this occasion, altogether disregarded? Those who then voted for papers, have since uniformly voted for papers, and now vote for them.

The gentleman has spoken of the accommodation of the French officers of the *Berceau*. The fact is, that the officers and men were, in the first instance, placed upon the same footing; both were allowed two dollars a week. On this sum, it was feared, the officers could not subsist. Application was made to the Executive that the officers taken should receive a larger allowance, on the ground that France should pay the sums allowed. Mr. G. would ask whether there was ground for crimination here? Whether it was improper to respect the law of nations, and to treat the French officers as officers, under similar circumstances, are always treated? And yet this conduct of the Executive, which, while it manifested a respect to the law of nations, also evidenced an equal regard to economy, had excited a great clamor.

Mr. G. concluded by expressing a hope that the gentlemen would get all the information possessed by the Executive, from which they will find that the most scrupulous regard had been paid

by the Executive to the laws, and particularly to those that respected the expenditure of public money.

Mr. DANA said he begged to observe that he had not said that any part of the Executive conduct, in this affair, was wrong. If the statement made by the gentleman from Virginia was correct, he would not hesitate to call what he had heard a popular clamor, and would do all in his power to put it down.

Mr. RANDOLPH read a document, in the possession of the House, to show that the information, desired by Mr. DANA, respecting the sums paid to the officers and men of the *Berceau*, was already before Congress.

Mr. DANA withdrew his motion.

Mr. NICHOLSON renewed it.

Mr. GRISWOLD said he had voted against the call for papers under the British Treaty. He should vote for this call. He had before stated, and he repeated it, that the ground on which that call was made, was, that the House had a right to participate in the treaty-making power.

The volume of the debates, which then took place, will show that both parties considered the call in that light. We then said, if it is your object to impeach Executive officers, or to know how much money has been expended, you have a right to the papers; but when you avow your object to be an interference with the Constitutional powers of other departments, we refuse them; so also said the President. But in this case we only call for papers in relation to the sale, purchase, and repairs of the *Berceau*. And have we not a right to inquire into the expenditure of public money? No one has ever doubted this right.

Mr. G. said he would, for these reasons, vote for the present call, believing that his vote on this occasion would be perfectly consistent with that under the British Treaty.

Mr. GILES said, he denied that the House of Representatives, in 1796, claimed a participation in the treaty-making power.

They contended for the right, a right which, he trusted, they would never abandon, of obtaining information whenever they were called upon to carry a treaty into operation. The first resolution of the House, adopted on that occasion, expressly disavows the right to participate in the making of treaties. [Mr. G. quoted the Journal to this effect.]

Mr. GRISWOLD said, he was astonished at the gentleman having read a resolution that altogether defeated his own argument.

[Mr. GRISWOLD here read the Journal.]

The question was then taken by yeas and nays, and the resolution carried by a unanimous vote.

Ordered, That Mr. GRISWOLD and Mr. GILES be appointed a committee to present the foregoing resolution to the President of the United States.

WEDNESDAY, April 7.

An engrossed bill for the relief of Thomas K. Jones was read the third time, and passed.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying his

H. OF R.

Northwestern Territory.

APRIL, 1802

report on the memorial of Fulwar Skipwith, referred to him by order of the House on the nineteenth of January last; which were read, and ordered to be committed to a Committee of the whole House on Friday next.

Mr. JOHN C. SMITH, from the Committee of Claims, to whom was recommitted, on the fifteenth ultimo, their report on the memorial of Paul Coulon, a French citizen, made a supplementary report thereon; which was read, and ordered to be referred to a Committee of the whole House to-day.

On motion, it was *Resolved*, That a committee be appointed to examine and report the state of the office of the Clerk of this House.

Ordered, That Mr. CLAY, Mr. HUGER, and Mr. SOUTHARD, be appointed a committee pursuant to the said resolution.

Mr. MITCHELL, from the committee to whom were referred, on the fifth instant, the amendments proposed by the Senate to the bill, entitled "An act for revising and amending the acts concerning naturalization," reported that the committee had had the said amendments under consideration, and directed him to report to the House their agreement to the same.

NORTHWESTERN TERRITORY.

The House resolved itself into a Committee of the Whole on the bill to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes.

Mr. FEARING moved to amend the bill so as to embrace the population of the eastern division as bounded by the articles of the ordinance, the effect of which motion would be to include about thirty thousand inhabitants of that division, that are excluded by the provisions of the bill, and respecting whom it is provided in the bill, that they may hereafter be added by Congress to the new State, or disposed of otherwise, as provided by the fifth article of the compact.

This motion gave rise to a debate of considerable length, in which Messrs. FEARING, BAYARD, GRISWOLD, GODDARD, HENDERSON, and RANDOLPH, supported; and Messrs. GILES, BACON, and R. WILLIAMS, opposed the amendment.

Those who supported the amendment contended that the exclusion of that portion of territory occupied by about three thousand inhabitants was both unconstitutional and inexpedient. On the ground of constitutionality, they contended, that under the articles of the compact, which were to be considered as the constitution of the Territory, Congress had only the right of forming the eastern division into one, two, or three States; and that under this power, no right existed to form one part of the division into a State, and leave the remaining sections in a Territorial condition; that the rights of the whole of the inhabitants of the eastern division were equal, and if one part was, so also must the remaining part be, admitted to the privilege of a State.

On the ground of expediency, it was contended that the situation of the excluded inhabitants would be peculiarly hard; that, if attached to the Indiana Territory, they would be placed two or three hundred miles from it; that they would be furthermore degraded from the second to the first branch of Territorial government, and that they would be deprived, by the reduction of their numbers, from the prospect of being admitted for a great number of years, to State rights.

On the contrary, the opponents of the amendment contended that the provisions of the bill were both Constitutional and expedient; that under the compact the right was given to Congress of admitting the eastern division into the Union, in the form of one, two, or three States; that this right involved a discretion to admit a part of that division at one time, and the remaining part at a subsequent period; that if the whole division were once admitted into the Union, Congress would be prohibited from dividing hereafter, when it was acknowledged such division would be expedient, the said division into two or more States, without the consent of the State now formed.

That, as to considerations of expediency, the hardships likely to be felt by the excluded inhabitants were such as arose, not from the provisions of the bill, but from their local situation; and that it was not true that they would be degraded by annexation to the Indiana Territory, to a lower grade of Territorial character than they at present enjoyed—the grade being the same.

Mr. RANDOLPH supported the amendment on peculiar ground, declaring that if the amendment should not prevail, he would still vote for the admission. He declared himself in favor of the amendment, principally from a desire to avoid the introduction of too many small States into the Union.

The question was then taken on Mr. FEARING's amendment, and lost—yeas 34, nays 38.

Mr. FEARING moved so to amend the bill as to leave to the new State the right of naming itself. Agreed to.

After some discussion of the details of the bill, the Committee rose and reported the bill, with amendments.

Ordered, That the said bill, with the amendments, do lie on the table.

THURSDAY, April 8.

Mr. JOHN TALIAFERRO, Jun., from the committee to whom was referred, on the fifth instant, the petition of sundry citizens of Georgetown, in the District of Columbia, with instruction to report thereon by bill or otherwise, presented a bill to incorporate the Directors of the Columbian Library Company; which was read twice, and committed to a Committee of the whole House on Monday next.

Mr. DENNIS, from the committee to whom was referred, on the fifth of February last, a motion, in the form of two resolutions of the House, "respecting the adjustment of the existing disputes between the Commissioners of the City of Wash-

APRIL, 1802.

Northwestern Territory.

H. OF R.

ington, and other persons who may conceive themselves injured by the several alterations made in the plan of the said city; also, relative to a plan of the said City of Washington, conformably, as nearly as may be, to the original design thereof, with certain exceptions," made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Monday next.

MR. JOHN TALIAFERRO, Jun., from the committee appointed, presented a bill to incorporate the inhabitants of the City of Washington, in the District of Columbia; which was read twice and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, enclosing a statement prepared by the Register, of the application of the appropriations made by Congress for clerk-hire, in the several offices of the Treasury Department, specifying the names of the persons, and the salaries allowed to each, for the three last years, in pursuance of a resolution of this House, of the twenty-fifth ultimo; which were read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying two statements, marked A and B, relative to expenses incurred by the United States in the exercise of jurisdiction over the territory of Columbia, since the assumption of jurisdiction by Congress, prepared in pursuance of a resolution of this House of the first instant; which were read, and ordered to be referred to the committee appointed, on the eighth of December last, to inquire whether any, and, if any, what alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

The House proceeded to consider the report of the select committee to whom were referred, on the fifth instant, the amendments of the Senate to the bill, entitled "An act for revising and amending the acts concerning naturalization," which lay on the table: Whereupon,

Resolved, That this House doth agree to the said amendments, with amendments, to the section proposed to be substituted by the Senate in lieu of the first and second sections of the original bill.

MR. NICHOLSON, from the committee appointed on the second instant, presented a bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city; which was read twice and committed to a Committee of the whole House on Monday next.

MR. NICHOLSON, from the committee appointed, presented a bill to provide more effectually for the due application of public money, and for the accountability of persons entrusted therewith; which was read twice and committed to a Committee of the whole House on Monday next.

The House, resolved itself into a Committee of the Whole on the supplementary report of the Committee of Claims of the seventh instant, to whom was recommitted, on the fifteenth ultimo,

their report on the memorial of Paul Coulon, a French citizen; and, after some time spent therein, the Committee rose and reported a resolution which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Paul Coulon, as agent for the captors of the ship Betty Cathcart and brig Aaron, prizes to the French privateer La Bellone, out of any moneys in the Treasury not otherwise appropriated, the sum of six thousand two hundred and forty-one dollars and forty-four cents, being the amount retained by the Treasury Department from the sales of the ship Betty Cathcart, and for duties on the cargo of the brig Aaron.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

NORTHWESTERN TERRITORY.

The House proceeded to consider the amendments reported yesterday from the Committee of the Whole to the bill to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes, which lay on the table; and the same being severally twice read, were, on the question put thereupon, agreed to by the House.

A motion was then made, further to amend the said bill, at the Clerk's table, by striking out, in the sixth, seventh, eighth, ninth, and tenth lines of the second section thereof, the following words: "and on the north, by an east and west line, drawn through the southerly extreme of Lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect Lake Erie or"—and inserting in lieu thereof, the word "to:"

It passed in the negative—yeas 27, nays 44, as follows:

YEAS—James A. Bayard, Thomas Boude, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, James Mott, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eastis, John Fowler, William B. Giles, John A. Hanna, Daniel Heister, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Robert Williams.

MR. JOHN C. SMITH moved farther to amend

the bill, by striking out the third section thereof, in the words following, to wit:

"*And be it further enacted*, That all male citizens of the United States, who shall have arrived at full age, and resided within the said Territory at least one year previous to the day of election, and shall have paid a territorial or county tax, and all persons having, in other respects, the legal qualifications to vote for Representatives in the General Assembly of the Territory, be, and they are hereby, authorized to choose Representatives to form a Convention, who shall be apportioned amongst the several counties within the Eastern division aforesaid, in a ratio of one Representative to every — inhabitants of each county, according to the enumeration taken under the authority of the United States, as near as may be, that is to say: from the county of Trumbull, — Representatives; from the county of Jefferson — Representatives, — of the — to be elected within what is now known by the county of Belmont, taken from Jefferson and Washington counties; from the county of Washington — Representatives; from the county of Ross — Representatives, — of the — to be elected in what is now known by Fairfield county, taken from Ross and Washington counties; from the county of Adams — Representatives; from the county of Hamilton — Representatives, — of the — to be elected in what is now known by Clermont county, taken entirely from Hamilton county: and the elections for the Representatives aforesaid, shall take place on the second Tuesday of October next, the time fixed by a law of the Territory, entitled "An act to ascertain the number of free male inhabitants of the age of twenty-one, in the Territory of the United States Northwest of the river Ohio, and to regulate the elections of Representatives for the same," for electing Representatives to the General Assembly, and shall be held and conducted in the same manner as is provided by the aforesaid act, except that the qualifications of electors shall be as herein specified."

The motion to strike out was supported by MESSRS. JOHN C. SMITH, GODDARD, FEARING, and HENDERSON, and opposed by MESSRS. GILES, MITCHILL, R. WILLIAMS, ELMER, and HOLLAND, on the ground that the right of the United States to admit necessarily involved the power of prescribing a convention.

The yeas and nays were taken, and it passed in the negative—yeas 26, nays 48, as follows:

YEAS—Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Thomas Morris, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Phaniel Bishop, Richard Brent, William Butler, Samuel J. Cabell, Thomas Claiborne, John Clopton, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H.

Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Robert Williams.

Mr. FEARING said he was of opinion that some provision ought to be made for the inhabitants excluded from the new State, and the continuance of suits from the old to the new Government; for these purposes he moved the recommitment of the bill. Lost.

Mr. DANA proposed so to amend the fourth section, as that a majority of the whole number of delegates elected in the Convention, instead of a majority of those present, should first determine whether it be or be not expedient to form a constitution, &c.

The yeas and nays were called, and the motion carried—yeas 38, nays 33, as follows:

YEAS—Thomas Boude, William Brent, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Joseph Hemphill, Archibald Henderson, William Hoge, Benjamin Huger, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, Henry Southard, Richard Stanford, Joseph Stanton, junior, John Stewart, John Stratton, Samuel Tenney, Thomas Tillinghast, John Trigg, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Richard Cutts, John Dawson, William Dickson, William B. Giles, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, and Robert Williams.

The bill was then ordered to be engrossed for a third reading to-morrow.

FRIDAY, April 9.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend the Judicial System of the United States;" to which they desire the concurrence of this House.

[The chief alterations made from the old system consist in the holding the Supreme Court only once a year by four justices, and the establishment of six circuits, within each district of which circuit courts are to be holden twice a year, composed of one justice of the Supreme Court and the judge of the district, in which said court is held.]

The bill was read twice, and referred to a select committee.

The House, resolved itself into a Committee of the Whole on the bill for the relief of Theodosius Fowler. The Committee rose and reported the bill without amendment.

APRIL, 1802.

Northwestern Territory.

H. OF R.

The House then proceeded to consider the said bill, at the Clerk's table: Whereupon, a motion was made, and the question being put, that the farther consideration thereof be postponed until the third Monday in November next, it passed in the negative.

Ordered, That the said bill be engrossed, and read the third time on Mouday next.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with such committee as may be appointed on the part of this House, to consider and report what business is necessary to be done by Congress, in their present session, and when it may be expedient to close the same.

The House proceeded to consider the said message: Whereupon,

Resolved, That this House doth agree to the same; and that Mr. S. SMITH, Mr. BAYARD, Mr. J. SMITH, (of New York,) Mr. HENDERSON, and Mr. GILES, be appointed a committee on the part of this House for the purpose expressed in the message from the Senate.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom it was referred to take into their consideration the subject of the public debt, and the provisions requisite for effecting its ultimate redemption, made a report thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

Mr. RANDOLPH, from the same committee, presented a bill making provision for the redemption of the whole of the public debt of the United States; which was read twice and committed to the Committee of the whole House last appointed.

Mr. J. C. SMITH, from the Committee of Claims, presented, according to order, a bill for the relief of Paul Coulon; which was read twice and committed to a Committee of the Whole House to-day.

NORTHWEST TERRITORY.

An engrossed bill to enable the people of the Eastern Division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, was read the third time, and the blanks therein filled up: And, on the question that the same do pass, it was resolved in the affirmative—yeas 47, nays 29, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, William Hoge, James Holland, David Holmes, George Jackson, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Isaac Van Horne, and Robert Williams.

NAYS—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Lemuel Williams, and Henry Woods.

MONDAY, April 12.

An engrossed bill for the relief of Theodosius Fowler was read the third time, and passed.

The House went into Committee of the Whole on the bill for the relief of Paul Coulon, which was reported without amendment, and ordered to be engrossed and read the third time to day.

Mr. S. SMITH, from the committee appointed, presented a bill for the relief of Lewis Tousard; which was read twice and committed to the Committee of the Whole for to-morrow.

Mr. CLAY, from the committee appointed on the seventh instant, to examine and report on the state of the office of the Clerk of this House, made a report: which was read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House, resolved itself into a Committee of the Whole on the report of the Secretary of State, of the seventh instant, to whom was referred, on the nineteenth of January last, the memorial of Fulwar Skipwith; and, after some time spent therein, the Committee rose and reported two resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

Resolved, That provision ought to be made by law, for the payment of four thousand five hundred and fifty dollars, unto Fulwar Skipwith, (which sum was advanced by him to the United States,) with an interest of — per centum, from the first of November, one thousand seven hundred and ninety-five.

Resolved That provision ought to be made by law for compensating the said Fulwar Skipwith, for his services from the first of November, one thousand seven hundred and ninety-six, to the first of May, one thousand seven hundred and ninety-nine, at the rate of — dollars, per annum.

Ordered, That a bill or bills be brought in pursuant to the said resolutions; and that Mr. DAWSON, Mr. VAN CORTLANDT, and Mr. STANTON, do prepare and bring in the same.

The House, then went into Committee of the Whole on the report of the committee of the twenty-second of January, on the petition of Sarah

H. OF R.

Sick and Disabled Seamen—United States Debt.

APRIL, 1802.

Fletcher and Jane Ingraham, referred to them on the tenth of December last, and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

Resolved, That it is expedient to grant to the widows and children, as the case may be, of the officers, seamen, and marines, who were lost at sea, on board the ship *Insurgent* and brigantine *Pickering*, lately in the service of the United States, four months' pay of their respective husbands or fathers.

Resolved, That it is expedient to provide by law for the payment of five years' half pay to the widows and children, as the case may be, of such officers in the Naval service of the United States as shall be slain in battle, or die, when in the actual line of their duty.

Resolved That the widows and children of those officers who were lost at sea in the ship *Insurgent* and brigantine *Pickering*, shall be entitled to this provision.

Ordered, That a bill or bills be brought in pursuant to the said resolutions; and that Mr. EUSTIS, Mr. GODDARD, and Mr. STANTON, do prepare and bring in the same.

An engrossed bill for the relief of Paul Coulon was read the third time and passed.

Mr. S. SMITH, from the committee appointed the ninth instant, on the part of this House, jointly, with the committee appointed on the part of the Senate, "to consider and report what business is necessary to be done by Congress in their present session, and when it may be expedient to close the same," made a report thereon; which was read, and ordered to lie on the table.

The House went into Committee of the Whole on the bill for the relief of sick and disabled seamen.

Mr. EUSTIS moved to strike out the first section which forms the moneys devoted to the above object into a general fund, to be applied according to the discretion of the President, instead of suffering it to remain, as heretofore, applied to the particular ports, (or those in the vicinity,) from which the moneys are derived.

This motion was supported by Messrs. EUSTIS, MITCHILL, and DANA, and opposed by Messrs. S. SMITH, MILLEDGE, DAVIS, MACON, and HUGER.

The question was then taken on striking out the first section, and lost; when the Committee rose, and reported the bill with amendments.

TUESDAY, April 13.

An engrossed bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes, was read the third time, and, on a motion made and seconded, ordered to be recommitted to a Committee of the whole House to-morrow.

Ordered, That the committee to whom was referred, on the eleventh ultimo, a memorial of the Illinois and Ouabache land companies, be discharged from the consideration of the same.

Mr. GILES, from the committee to whom was committed, on the ninth instant, the bill sent

from the Senate, entitled "An act to amend the Judicial System of the United States," made a report thereon; which was read, and, together with the bill, ordered to be committed to a Committee of the whole House on Friday next.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. BAYARD, from the committee to whom was recommitted, on the fifth instant, the bill sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be read the third time to-morrow.

Mr. DAWSON, from the committee appointed yesterday, presented, according to order, a bill for the relief of Fulwar Skipwith; which was read twice and committed to a Committee of the whole House to-morrow.

SICK AND DISABLED SEAMEN.

The House took up the bill to amend an act for the relief of sick and disabled seamen, as reported by the Committee of the Whole, and agreed to the amendments with other amendments.

Mr. BISHOP moved to add to the first section a provision for applying \$20,000 to the erection of a hospital in Massachusetts.

Mr. S. SMITH moved to insert in the room of " \$20,000, the sum of \$15,000," which he considered as adequate to commencing such building.

Mr. BISHOP agreed to the amendment.

This motion was supported by Messrs. BISHOP, S. SMITH, HUGER, BACON, and EUSTIS, and opposed by Messrs. ELMENDORF, DAVIS, MILLEDGE, and RANDOLPH.

Mr. MILLEDGE moved an amendment, applying \$5,000 to the erection of a hospital in Savannah.

The proposition to appropriate \$15,000 to the erection of a hospital in Massachusetts, was agreed to—ayes 39, noes 29.

The bill was ordered to be engrossed for a third reading to-morrow.

UNITED STATES DEBT.

The House then went into Committee of the Whole, on the bill providing for the payment of the whole debt of the United States.

Mr. MOTT moved so to amend the first section that the appropriation of \$7,300,000 applied to the annual discharge of the debt until the whole shall be redeemed should be stricken out, and words introduced making such appropriation for two years only.

Mr. MOTT said that his reasons for the motion were that \$7,300,000 was so large a proportion of the whole revenue of the United States, that an appropriation of that sum for any great length of time might embarrass the operations of the Government. Though we are now in a state of peace,

APRIL, 1802.

Debt of the United States.

H. OF R.

we cannot promise ourselves that we shall remain so for ten, fifteen, or twenty years. By the provisions of this bill the Commissioners of the Sinking Fund are to be entrusted with the disposition of this large sum, and not the Legislature. He was against reposing this extensive confidence for so great a length of time. He knew no reason for such a measure but the fear of trusting a subsequent Legislature. He was as much in favor of a speedy extinguishment of the public debt as any man; but he was averse to tying the hands of the Legislature in this way. Of the propriety of continuing this appropriation, the Legislature in existence two years hence, will be better judges than we now are, as they will be better acquainted with the situation of the country than we can possibly be.

If we shall be involved in war, we shall be obliged, under the provisions of this bill, to incur new loans; or we shall be obliged to raise additional taxes, the collection of which being necessarily very slow, will not save us from the necessity of making loans. To refuse to trust a subsequent Legislature must be on the contemplation that such Legislature will not be so righteous or virtuous as ourselves; which opinion Mr. M. said he could not entertain. For these reasons he hoped his amendment would prevail.

MR. RANDOLPH.—I hope the amendment will not be adopted, and that for the plainest reason that can be assigned, that its adoption will be equivalent to the rejection of the bill. The amendment proposes to limit the appropriation to two years; or, in other words, to make no appropriation at all. For, by a reference to the report of the Secretary of the Treasury, it will be seen that the necessary reimbursement of the public debt for the ensuing two years requires within about \$200,000 of the \$7,300,000 proposed to be appropriated by this bill.

The gentleman says, and I agree with him in the opinion, that future Congresses will be as wise as we are, and equally competent to provide for the discharge of the public debt. Those Legislatures may say the same thing of their successors, and in this way provision will never be made. The great question now is, whether Congress will provide for paying the public debt, for which there is now no adequate provision? Whether this bill be passed or not, you must pay above \$7,000,000. By passing it, you make no new appropriation; you only provide for paying that which you are already pledged to pay. It is true that you may incur new loans, or you may prolong old ones to pay the instalments becoming due; but I hope the Committee will not agree to do this. I trust that the Committee will be of opinion that this is the time to take efficient measures for the discharge of the whole debt.

The gentleman fears that the Government may be hereafter embarrassed by this large appropriation. On what are his apprehensions founded? Is it apprehended that the revenue beyond the \$7,300,000 will not be equal to the current expenditure of the Government? If such are his apprehensions, he ought not to have let go the old taxes

which we have recently taken off, and he ought to be ready to lay new ones. But have we not reason to believe that the revenue will be equal to the calls of the Government, when it is recollected that our duties on imports amount to \$9,500,000? Instead of devoting to the payment of the debt, the surplus above the expenditures of the Government, it is proposed by this bill to give the Commissioners of the Sinking Fund a definite sum, which shall not be affected by the expenses of the Government. Gentlemen will see, by documents on the table, what these surplusses have been under the old system. It will appear that the expenditure has in many cases exceeded the receipts.

It is certainly true, that occurrences may take place that shall call for resources beyond our total revenue. But does it follow, that Government, under such circumstances, will be hampered by this provision? One million, two hundred thousand dollars only is granted beyond the sum already appropriated, which may be considered as vested in the Sinking Fund. The expedient therefore, of limiting the appropriation does not limit our resources; and a provision is introduced into the bill to derive from the sum of \$7,300,000, the expenses incurred under treaties, if it shall be necessary; thus providing for a contingent defalcation of revenue. But if the situation of the country shall be such as to render it necessary to provide for a great defalcation, these provisions will not check us—we must borrow money. What then will be our situation? We shall be paying \$1,200,000 with one hand, while we are borrowing a large sum with the other.

The sole effect of the operation effected by this bill, during this and the ensuing year, will be to take a certain portion of the revenue and apply it to the discharge of the debt, leaving the balance to meet the expenses of the Government, instead of first paying the expenses of the Government, and then applying the surplus to the Sinking Fund.

If there shall be a great emergency, will the people have any objection to the imposition of necessary taxes, or to the making loans? When I speak of a great emergency, I allude entirely to war, as no other emergency can happen which will require great expenditures.

Let us take a case which has already occurred. Exclusive of the six per cent. interest which we are bound to pay, we engaged to pay, annually, two per cent. on the principal. Circumstances occurred which called for greater sums than the amount of our revenue. If then the money devoted to this purpose had not been vested in the Sinking Fund, it would have been a resource for navies and armies. We now propose to make the same provision for the deferred and other stock. What would have been the effect upon our stock, if the same provision had been heretofore made, which is now proposed by the gentleman from New Jersey? We might perhaps have had two per cent. instead of eighteen redeemed.

A great effect of this appropriation will be to insure an economical disbursement of the public money, which will be sufficient for every purpose

H. of R.

Debt of the United States.

APRIL, 1802.

of Government, in case a great emergency does not arise. And should such an emergency arise, can the Committee suppose that a nation which has taken such steps for the establishment of her credit, will be at a loss to borrow money? And money you must borrow, if such an emergency occur; for, in case of a war, the first gun fired will cost you more than \$1,200,000, the additional sum appropriated by this bill. It will also be remarked that the sole object of this bill is to provide for the redemption of the public debt, the ensuing years after this and the next year; and if the effects of the peace do not disable us from complying with our engagements in 1802 and 1803, it is clear that we shall be able to apply to the further payment of the debt the same sum thereafter.

I believe the Committee will have little difficulty in agreeing, that if the whole revenue that can be spared shall be applied to the extinguishment of the debt, the situation of the United States will be more advantageous, than if such application had not been made. The national credit must thereby be increased, which will rise in proportion to our ability and disposition to pay. But if we now refuse to make a permanent, irrevocable provision for all the debt, which the first Administration has wisely done in relation to a part, then we may hereafter, at a critical period, be obliged to borrow at an interest, perhaps of ten or twelve per cent.

I regard this bill as involving a principle more important than any which has been adopted by this Government, or which is likely to be adopted, for several years. I regard the motion now made as a death-warrant; as it goes to deprive it of its vital principle—that of guarding the application of the resources of the Government to the diminution of the debt, unless in a great crisis. It is true that in such a case, you cannot touch the revenue which is now pledged; but you can borrow more; and wherein consists the difference between applying your ordinary revenue to the discharge of the debt, and creating by loan an equivalent debt; and the applying the ordinary revenue in the first instance to the current expenses of the Government? The effect is precisely the same.

The question was then taken on the amendment of Mr. MORR, which was lost without a division.

Mr. GRISWOLD moved to strike out the fourth section, which authorizes the Commissioners of the Sinking Fund, with the approbation of the President, to reloan any of the instalments of the Dutch debt becoming due.

Mr. GRISWOLD said he did not know any necessity for reloaning the foreign debt. The instalment due this year amounts to above \$2,000,000. This instalment, we are told by the gentleman from Virginia, has been already remitted. The instalment due the next year amounts to \$2,347,000; that due on the ensuing year is short of \$2,000,000. Now we have in the Treasury \$3,000,000 of specie. Where then can be the difficulty of remitting under these circumstances? The bill purports to be a bill for extinguishing

the whole debt, and yet here is a provision to perpetuate it. I hope the section will be stricken out, and that no further authority will be given to extend the debt.

Mr. RANDOLPH.—I believe the gentlemen from Connecticut on reconsidering the reasons which he assigned, will be averse to striking out the section. Let us recur to the report of the Secretary of the Treasury. He therein says:

"The inconvenience of paying the large instalments of Dutch debt, which fall due this and the ensuing years, is much increased by the obligation of discharging them abroad, on account both of the injury arising from such considerable portion of the circulating capital of the United States being thus drawn abroad, and of the difficulty and risk which attach to the purchase of so large an amount of remittances. Although those difficulties must be met if they cannot be obviated, it seems proper to adopt every measure which may diminish them. The plan contemplated by the act of the third March, 1795, of converting that debt into a domestic debt, has heretofore been found impracticable, and, from the latest advices, the event of peace absolutely precludes any expectation of its being carried into effect."

The gentleman has offered one of the strongest reasons which could have been assigned, for retaining this provision of the bill, and that is, that the instalment due on the ensuing year exceeds \$2,000,000. Wherefore object, instead of making payment of the Dutch debt in the existing instalments, (some of which are extremely burdensome, and others as trivial,) to paying it in equal instalments, and to applying the difference between the amount to be paid, and that actually paid to the extinguishment of the debt at home? By this means the discharge of the debt will be as rapidly going on, and the ultimate period of payment will not be protracted.

It is a fact that the difficulty and danger of payment abroad are much greater than at home, as clearly appears in the case of Fulwar Skipwith, recently before the House. In the transaction to which that case refers, the Secretary of the Treasury encountered such difficulty in obtaining remittances, that he was obliged to contract for the purchase of bullion at a loss of \$4,000. This difficulty is at present great, and it is likely to increase. It is so great that the Bank of the United States, though highly disposed to aid the fiscal operations of the Government, and notwithstanding the offer to lodge the money with them six months before the payment is to be made abroad, have formally declared they cannot undertake the agency. Now, after the opinion of the Bank of the United States, (which must be so much better acquainted with the necessary arrangements attending the remittance of money, than any member on this floor,) may I not be permitted to take that opinion, as better authority than the gentleman from Connecticut? Is it not somewhat surprising, that, under such circumstances, the gentleman from Connecticut is opposed to giving to the Government a facility to comply with its engagements, not in the least degree calculated to impair a speedy discharge of the public debt?

APRIL, 1802.

Debt of the United States.

H. OF R.

The gentleman says that in this bill, professing to discharge the whole debt, there is a clause giving perpetuity to it. It is to be presumed that the gentleman has read the bill. If so, I cannot reconcile the avowal of such an opinion with the intelligence and discernment of that gentleman. The gentleman knows that the Dutch debt, consisting of six instalments, is to be paid within six years. He knows, too, that this provision does not delay, but only equalizes them.

MR. S. SMITH.—I am not fully acquainted with the contents of the bill, and when the gentleman from Connecticut was up, I felt disposed to consider this provision for a reloan as unnecessary; but the arguments of the gentleman from Virginia have convinced me that it is necessary, and that the operation may be a good fiscal operation. The fund resulting from the re-exportation of imported articles, will in a great measure cease with the war; and we will of course be thrown for reliance on the exports of our own articles. These for the past year do not amount to more than \$33,000,000. From the fund derived from these we will be obliged to pay the value of our imports, and the additional sum for bills of exchange to the amount of these \$2,000,000 of Dutch debt. This extraordinary demand for bills of exchange, will probably raise them five per cent. There will, therefore, on the purchase of \$2,000,000 in bills, be a charge of \$10,000. The like occasion for bills existing for three years will add one-fifteenth part to the whole demand. It may therefore be good policy to vest in the Commissioners, subject to the control of the President, in case the price of bills should be injuriously high, a power to reloan any part of these instalments.

MR. GRISWOLD.—I think I cannot be mistaken in the effect of this provision in perpetuating the debt—a provision that authorizes the Commissioners of the Sinking Fund, with the approbation of the President, when instalments become due on the Dutch debt, to reloan them for six years. The Commissioners, and the President may, if they see fit, reloan the whole sum becoming due this year, and so on, and thus perpetuate the debt with new charges; a premium in addition to the ordinary charges. The bill provides that the interest shall not exceed five per cent., and the premium one per cent., so that the amount may be six per cent. interest, which shall continue for six years; and then if you are not ready to pay, I suppose you must go again upon new loans. I am against such a provision, and in favor of that which shall immediately discharge the debt as it falls due.

Nor do I think there will be any inconvenience attending the operation. The Secretary of the Treasury has remitted the whole of the instalment due this year. He has now in the Treasury a specie balance of three millions, with which to pay the two instalments of about two millions each, due for the two ensuing years. Saying there is a difficulty to remit which, with this sum in the Treasury, is, I conceive, saying a very strange thing. I believe the remittance will be perfectly safe and easy, and that it can be better

made in peace than in war. The difficulty in the case alluded to, arose altogether from the war. In times of peace there can be no difficulty in remitting. We ought, therefore, to avail ourselves of the present period of peace; we are possessed of ample funds; and though the immediate payment of the debt may subject us to some little inconvenience, I think it is better to submit to that, than to postpone the payment. I know that the millions reloaned might be applied to the reduction of the domestic debt; but I deem it most important to extinguish the foreign debt.

For these reasons, I do say that the tendency of this section is to perpetuate the foreign debt; and though, according to the provisions of this bill, the prolongation can only be for six years, yet at the expiration of that time some new cause may exist for a new loan, and another provision to the like effect be introduced.

MR. RANDOLPH.—With regard to the zeal of the gentleman from Connecticut to extinguish the debt, I suppose it is sufficiently great; but when that gentleman alludes to the whole sum due this year being paid, the Committee will pardon me for considering the zeal and activity of the Secretary of the Treasury as at least equal to the zeal and activity of that gentleman. Now the Secretary of the Treasury, who has demonstrated his zeal by substantial acts, which have produced a benefit to the nation, tells you that it is, in his opinion, necessary to equalize the Dutch debt. The gentleman from Maryland, (Mr. S. SMITH,) whose commercial knowledge no one will deny, tells you that in his opinion, there will be difficulties in obtaining bills of exchange to so large an amount as will be required to meet the existing instalments. The Secretary of the Treasury, though he had engaged all the banks to obtain the best bills, (yet from the recent failures, some will no doubt be bad,) tells you he has experienced great difficulty in making remittance, and infers that there exists no necessity for this provision. He says the large sum of \$2,300,000 may be remitted with facility, immediately after the Secretary says it cannot be effected without difficulty; and after the Bank of the United States has determined that the difficulty and danger attending the operation are so great that they will not undertake it; and at the same time that they offer to purchase for the Government all the good bills they can obtain without a commission. Now on which information am I, an ignorant man, unacquainted with mercantile arrangements, to act? that of the Secretary of the Treasury, who has had the experience derived from the purchase of two millions of bills, and of the Bank of the United States; or that of the gentleman from Connecticut, whose talents and knowledge, however, I feel no disposition to depreciate?

Does the gentleman wish the United States to buy good or bad bills? If good, on what basis? Or is his zeal so great that he is willing to remit in specie? I believe, if he stands on this ground, he will find himself in a small minority.

The demand now made by the Secretary of the Treasury shows by his previous conduct that it is

H. OF R.

Debt of the United States.

APRIL, 1802.

not made with the view that is now assigned. The man who, by his indefatigable diligence, has procured the whole remittances of the present year in one third of the time allowed, proves to you that it is no object with him to retard the operations connected with an extinguishment of the present debt. After contemplating the great exertions made by the Secretary, and witnessing the good that has accrued from them, I will not hesitate to give credit to the report of such an officer. That officer might undertake to remit the instalments falling due; he might promise to remit them; but he might, notwithstanding every possible effort, be unable to perform. As therefore he sees that, after all his exertions, difficulties may exist which he cannot surmount, like a good officer, he recommends a legal provision for complying with the engagements of the nation. And this is now to be refused by gentlemen who are not acquainted with the peculiar circumstances that attend the making remittances to Europe. For my part, I know nothing about bills of exchange; but I do know that the Secretary, from the commencement of the session, has regretted the difficulty of purchasing safe bills wherewith to make remittances.

"The difficulties and risks," says the Secretary, "attaching to the purchase of remittances, and which can only be obtained at a distance from the Treasury Department, and without any immediate control of any officer of the Government, may not be obviated by any means."

And yet, after this information, gentlemen are prepared to tell the Secretary of the Treasury, who had been two years employed in making these remittances, and who from experience ought to be presumed to be well acquainted with circumstances. We are better acquainted with the duties of your station than you, and we will not grant your request, though you are of opinion that it is required for the preservation of public credit.

Mr. BAYARD.—I do not mean on this occasion to question the eulogium, pronounced by the gentleman from Virginia, on the Secretary of the Treasury, or to say that he is not entitled to our passive confidence; but I mean to say, that according to the provisions of his report, the propriety of this provision cannot be maintained. By his first report, it appears that, in his opinion, it was not necessary to reloan the whole of the Dutch debt. He says "the inconvenience and difficulty of procuring remittances to that amount, and the real injury arising from such heavy disbursements abroad, render an extension of the terms of payment, by partial reloans, a desirable object."

He says "partial reloans"—the bill before us authorizes a reloan of the whole Dutch debt. The Secretary goes on—"All that seems wanted is, that the gross amount of payments, which are to take place during the eight next years, should be more equally apportioned among those years."

Now, according to this report, the bill before us is improper. But, in my opinion, it can be demonstrated that it is good policy as soon as practicable to pay off the whole of this foreign debt. We are told by the Secretary that we have the

power to pay it off. We do not know that we shall next year have the power. Before that time we may be involved in war, and then we shall not be able to pay it. Now we have the power. I ask then whether it is not now better to pay it, than to trust to contingencies which may prostrate our public faith? I find that for the last year nearly the same sum was remitted as will be required for the year 1803; and what was the impression then made? I do not know any great inconvenience that was then experienced; nor do I know that bills are now higher than they then were. But, even if there should be a small inconvenience attending the discharge of this debt, I ask whether it would not be proper, notwithstanding, to put our shoulders to the wheel at this favorable period?

It has been properly remarked, by the gentleman from Connecticut, (Mr. GRISWOLD,) that this provision may augment the debt; for we know that loans cannot be made without additional charges. We cannot therefore see from any information before us, that we should be able to make a reloan for a lesser expense than that attending a remittance.

If gentlemen will look at the documents on the table, they will see that the Secretary contemplates the extinguishment in 1809 of certain portions of the debt, in which are included the payment of all the instalments of Dutch debt; on this system any reloan will break in.

Upon the whole, as the inconvenience urged is entirely specious, as it is at best possible, and may probably be altogether avoided, I think it best to run the risk, rather than endanger the early payment of the debt.

Mr. NICHOLSON.—We find by the report of the Secretary of the Treasury an appropriation of \$7,300,000, proposed to be annually applied to the discharge of the whole public debt. In the accompanying documents it is stated that one instalment on the Dutch debt of \$2,271,692, will be due in 1802; \$2,347,038, in 1803; \$1,942,028, in 1804; \$1,734,119 50, in 1805; and \$1,325,019 in 1806.

Instead of paying off these sums as they become due, which, it will be observed, are various in amount, the Secretary has thought that it would be most prudent to equalize the instalments. To effect this object he has requested that authority may be vested in the President to make partial reloans. According to the present terms, the Dutch debt will be entirely paid in 1809; and it is not intended that any of the proposed reloans should retard the extinguishment. I am inclined to think this provision of the bill is not so precise to this effect as it ought to be; as by it the new loans are not necessarily reimbursable till a period beyond 1809. I will therefore move so to amend the bill as to make all the reloans reimbursable before 1809.

[Mr. N. offered a motion to this effect.]

Mr. GRISWOLD.—I do not like that arrangement. The eight per cent. stock is calculated to be paid off in 1809. If you carry forward to that period the final payment of the Dutch debt, you will necessarily prevent the payment of the eight per cent. stock, from the inability of the Government

APRIL, 1802.

Debt of the United States.

H. of R.

at one time to pay both. It is to be considered that the interest of eight per cent. is war interest, and that it will be the interest of the Government to pay off the principal as soon as possible; and the ability to pay that stock in 1808 and 1809 will arise principally from the smallness of the foreign instalments.

I am also opposed to procrastinate the payment of the Dutch debt by reloans, as they will probable cost more than any other description of debt, perhaps equal to the eight per cent. stock, from the premium and charges which always attend loans. I am also opposed to this measure from the difficulty of making remittances in time of war.

With respect to the merits of the Secretary of the Treasury in remitting, I do not wish to detract from them; though the operation is as plain as A, B, C. Bills are below par, there is money enough in the Treasury, and all that the Secretary has to do is to direct the cashiers of the banks to buy bills. I have no doubt, the Secretary has acted in this business with propriety, as every Secretary ought to, and would act. I am sensible too that bills may next year be above par. But still, should this be the case, the expense will not equal that of reloans.

As to the conduct of the banks on this occasion, I know not how it is; but I presume it is such as the gentleman from Virginia has stated it. They may not make the remittance without compensation; but I have no doubt but that if a proper premium is offered they will undertake it. They are like merchants, and we must pay for these agencies what other people pay.

MR. RANDOLPH.—The gentleman from Connecticut seems to reason, as if this provision were imperative; whereas it does not declare that the instalments of the Dutch debt shall not be paid in the precise proportion of the existing instalments; it only vests a discretionary power, because those who are well acquainted with the business of remittance, know the difficulty attending it, and wish to meet it by legal provisions.

It is probable that the Secretary will be obliged to buy bills above par on England, and then buy bills below on Holland, thus incurring a double loss. For my part I have no objection to vesting in the Commissioners of the Sinking Fund and the President, this discretionary power, because I believe the existing instalments, without a recurrence to reloans, will be paid, if the payment be advantageous to the United States.

The gentleman says, if the Dutch debt is left to 1809, we shall not be able to pay the eight per cent. domestic debt. But, by withholding the payment of the intermediate instalments, you will be in a situation to meet the whole Dutch debt in 1809; and if the price in the market of the eight per cent. will admit it, it may be bought with the millions spared by the postponement of the payment of the Dutch debt.

The remarks of the gentleman respecting bills being below par, and the facility of purchasing them, may apply perhaps to ordinary cases, where only small sums are required; but when a demand for two millions, beyond the current demand, is

superadded, will not the necessary effect be to enhance the price of bills? But suppose the individuals from whom bills are generally purchased have no right to draw beyond the ordinary demand for bills, what will be the effect? Is Government to be driven, no matter what length—to put, as the gentlemen say, their shoulders to the wheel? In answer, I will say that the Government have put their shoulders to the wheel, and have manifested in their actions the most unequivocal disposition to pay off the debt; but, notwithstanding this disposition, they are unwilling to put the country to the inconveniences that may arise from the payment of the large instalment due in 1803—they are therefore in favor of equalizing it.

Besides, if every dollar that is saved from the Dutch debt be applied to the payment of bank loans, navy stock, or eight per cents. will there be less debt extinguished? Will not such application of the public moneys promote as highly the public interest; and have gentlemen shown that the ultimate redemption of the debt will be prolonged for a moment?

MR. S. SMITH said this section, and others that follow, were of considerable importance; the effects of which he had but little considered. He therefore wished the Committee might rise, and time be allowed for further consideration until tomorrow. It appeared to him that the provision in the bill would answer one good object at least. Persons who have bills, may hold them up, and the Secretary of the Treasury, having this power, may keep down the price. If the provisions should have no other effect, this may be a very important one.

The Committee rose, and had leave to sit again.

WEDNESDAY, April 14.

The bill sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," together with the amendments agreed to yesterday, was read the third time and passed.

An engrossed bill to amend an act for the relief and protection of disabled seamen, was read the third time, and passed—yeas 36, nays 33.

Previously to the passage, Mr. ELMER spoke at some length against the bill.

MR. ELMENDORF moved the appointment of a committee to inquire into the expediency of making further regulations respecting the marine corps. The object of this motion was to authorize the President to reduce the officers of the corps proportionably with the reduction made of the privates, who had been reduced from one thousand two hundred to four hundred, whereas the number of officers remained forty, though twenty were sufficient.

In reply, it was stated by Mr. S. SMITH, that fifteen vacancies had occurred, which the President had declined filling; that the present number of officers was twenty-five; and when five more vacancies should occur, the relative proportion of officers and privates would be attained; that it

H. OF R.

Debt of the United States.

APRIL, 1802.

was proper to leave the disposition of the corps under the discretion of the President, as in the event, during the recess, of a war with the Emperor of Morocco, which was far from improbable, an augmentation might be expedient.

The motion of reference was lost—yeas 29, nays 43.

UNITED STATES DEBT.

The House again resolved itself into a Committee of the Whole on the bill making provision for the redemption of the whole of the public debt of the United States.

Mr. GRISWOLDS motion, to strike out the fourth section, being under consideration—

Mr. RANDOLPH said: I rise to repeat the reasons which I urged yesterday against the prevalence of this motion. I believe that every substantial objection may be avoided by a slight amendment, so that the power given may be to borrow in relation to the instalments now due, and not again to reloan for the new loans that may be made. This will remove all idea respecting the effect of this provision to perpetuate the public debt. The powers of the Commissioners of the Sinking Fund enable them now to borrow, provided remittances cannot be made. The power to borrow forms a prominent feature in all your sinking funds. They have also a power to sell, below par, stock created by themselves. It is evident, therefore, that by this provision no new powers are given; but that, on the contrary, old powers are limited and restricted; nor will there be one dollar less applied to the redemption of the public debt under this clause than if it had never existed.

Gentlemen not acquainted with this subject know not the difficulty of making remittances to Holland. To meet these difficulties this section proposes to vest discretionary powers in the Commissioners and the President. If struck out, it must be from diffidence in the persons in whom you have heretofore so liberally confided; and this will be in direct hostility with the principles of the sinking fund, which confer on the board such tremendous powers, even the power of selling half the stock they create below par. Is not, then, the extent of the power given by this section less destructive than that already vested? For there is now a sum of near five millions, which it is in the power of the Commissioners to create, and to sell half of it below par.

It does not belong to me to question the motives of the gentleman from Connecticut (Mr. GRISWOLD) in making this motion; but what will be the effect of it should it prevail? The Government will be either entirely unable to make remittances to Holland, or be obliged to remit to Holland, through England, at an expense of at least ten per cent., or to remit the specie. What will be the consequence? Why that same clamor in the nation that some gentlemen would wish now to produce. I hope that the gentleman from Connecticut is not of this description of persons, and that he will not be for precipitating the Government, by their own acts, into a situation which shall hereafter create popular clamor.

I trust that the Committee will consider these

circumstances, and perceive that the discretionary powers given by this act to the Commissioners under the direction of the President is a necessary power, and one, by the exercise of which, the public welfare cannot be hazarded. Before the year 1801, the instalments on the Dutch debt were trifling in amount; as they never exceeded annually more than a million. Does the gentleman from Connecticut believe, or is he prepared to acknowledge the former Secretary to be inferior to the present? and what will he say to the conduct of the former Secretary, who was obliged to create stock at a loss of twelve per cent.? If, then, this took place under the former Secretary, when it was not required to remit more than a million, may not the difficulty be greater when the instalments are more than double? Strange to tell, the gentleman from Connecticut has ascribed the difficulty, under the late Secretary, to the existence of war, which was the very reason for facilitating remittance, owing to our extended trade. But when trade shall be restored to its ancient channels, the probability is, that bills to so great an amount on Holland, as will be required, cannot be purchased, and it is probable that a double loss will be incurred by purchasing bills through England.

Mr. GRISWOLD.—I do not perfectly understand the arguments of the gentleman from Virginia. He says that the Commissioners of the Sinking Fund have greater powers than are conferred by this law, and that this law is designed to limit them; and yet he says if we do not confer these powers, we shall hazard the public credit. I do not understand how these two arguments can stand together. I believe that this fourth section confers greater powers than the Commissioners now possess. The gentleman says, that under the act of March 3, 1795, powers are given the Commissioners commensurate to the objects of their institution. But the power given to meet the instalments on the Dutch debt was only to borrow when necessary. I have no objection to give this power when the state of the Treasury requires it. I, therefore, do not propose to repeal that act. But that act gives no power to borrow, when the money wanted is in the Treasury; and, for that reason, this section has been introduced. Conceiving, therefore, that this section will extend, instead of limit, the powers of the Commissioners, I object to it.

Again, the gentleman from Virginia says, that by the act of May, 1796, which gave authority to borrow five millions, the Commissioners have more extensive power, and that that power still exists. If it does exist, the section is not calculated to abridge it, for this law expressly continues it. But I think that act does not give the present power to borrow the sum therein authorized. [Here Mr. G. quoted the act.] Now, it appears that the authority to borrow five millions was in order to pay the debt due to the Bank of the United States, branch bank of New York, and the instalment of the Dutch debt due that year. That year is passed; the debts then due are paid, and of course the power is gone with

APRIL, 1802.

Debt of the United States.

H. OF R.

the occasion for which it was created; the law was only passed to enable the Commissioners of the Sinking Fund to meet the pressing demands of that year. Those demands have been satisfied, and the power consequently ceases. The power given by the law of 1795 is all that is necessary; and under that power it never was contemplated that the Commissioners should borrow when there was money sufficient in the Treasury. For these reasons I do not think we ought to enlarge the powers of the Commissioners. Nor do I believe that there will be any difficulty in making remittance for 1803. There is no prospect that bills on Europe will be under par; the prospect is that they will rise. In consequence of the great price of our produce, we have had a great influx of cash, by which we have been enabled to pay off a great proportion of debt due in Europe, and there is less amount of debt due now than at any former period since the war. We shall not probably run in debt as formerly, and bills will rise; our credits in Europe will extend, with which the demand for bills will increase; they will of course rise, and in two or three years we shall be obliged to give more for them than now. This, therefore, is the time to make remittance for 1803. Why we should be exposed to the postponement of this payment, when it can now be made on better terms than hereafter, is to me unintelligible. If we do not do this, the effect will be to perpetuate the debt.

It does not appear to me clear, that under this section, the Commissioners may not reloan after the six years during which the present instalments are due; and, in this way, the debt may be perpetuated to the end of time. I, therefore, am decidedly of opinion, that it is best to go on in the old way, until some embarrassment shall occur, which we shall be in time to provide for at the next session of Congress.

I have no objection to repose, with the gentleman from Virginia, implicit confidence in the Executive. But I never have thought that it was a sufficient argument for the adoption of any measure, to say that it had been recommended by a Secretary of the Treasury. I have always thought that we ought to judge for ourselves; and, so judging, I think we must conclude that this provision is unnecessary.

Mr. RANDOLPH.—I am sorry to be so unintelligible to the gentleman from Connecticut; but when the laws of the United States are so unintelligible to that gentleman—those laws which are doubtless drawn with perspicuity, and some of them drawn by himself—how can an individual member expect to be understood? The gentleman says the Commissioners have no power to borrow money for the payment of the instalments of Dutch debt under the act of May, 1796. Now, I am willing to test everything I have said by the accuracy of the construction which I have put on that law. I wish the Committee to attend to the act, and to see what reliance ought to be placed on the facts or deductions of that gentleman. The act says:

"That it shall be lawful for the Commissioners

'of the Sinking Fund, with the approbation of 'the President of the United States, to borrow, or 'cause to be borrowed, on the credit of the United 'States, any sum not exceeding five millions of 'dollars, to be applied to the payment of the capital or principal, of any parts of the debt of the 'United States now due, or to become due, during 'the course of the present year, to the Bank of 'the United States, or to the Bank of New York,' 'or for any instalments of foreign debt.'" And yet the gentleman gravely says, that this law only applies to one year. Now, let me ask, is the sum due abroad in 1802 an instalment of foreign debt, or is it not? The words "now due, or to become due," clearly refer to this foreign debt, and the term "any instalment," refers to future instalments becoming due.

The gentleman further says that this section gives powers in addition to those already possessed by the Commissioners. It is true that they are in addition, but it is also true that they are in qualification of those powers. If the debt provided for were a domestic debt, there would not be a shadow of difference. This provision will not prevent the Commissioners from buying good bills; but it will provide for the contingency of your having abundance of money here, and but little whereon to draw in Holland. Your engagements must be complied with. Now, is it best that, in order to provide for such an emergency, the Commissioners should have the power granted in this section, which will not prolong the final payment of the debt, or that they should be obliged to exercise the power of creating stock not redeemable till 1819, which will be the case with stock created under the act of May, 1796?

The gentleman further says, that this provision will perpetuate the debt. But a simple amendment to inhibit reloan, additional to those contemplated to be authorized by this bill, will prevent this. But we are charged with the strange and novel doctrine of confidence in the Executive. And what does this charge arise from? An officer, who has remitted two millions nine months before it was due, a gentleman whose fiscal knowledge the gentleman from Connecticut might have availed himself of, is not to be confided in; while the mere *ipsi dixit* of the gentleman from Connecticut is to be confided in! Upon my soul, while I admire the ingenuity, I cannot admire the modesty of the gentleman!

The gentleman says, it is time enough to meet embarrassments when they occur; but I will tell him it is our business to prevent them from occurring; and, I believe, the gentleman from Connecticut has not given evidences of greater knowledge on this subject than the Secretary of the Treasury, or the Bank of the United States, or the best informed merchants. For my part, I do not pretend to mercantile knowledge. I am ready to grant that the mercantile knowledge of that gentleman is much greater than mine. I do confess, that, on such subjects, I have always relied upon the Secretary of the Treasury, the banks, or the best informed merchants. But, while I allow the superior mercantile information of the gentleman, I

H. OF R.

Debt of the United States.

APRIL, 1802.

doubt the accuracy of the sources from which it is drawn, the more especially as I do not find it supported by the information of mercantile men from the seaports, and from other respectable sources.

The question was then taken on striking out the fourth section, and lost—ayes 21, noes 41.

Mr. NICHOLSON moved, and Mr. RANDOLPH seconded, an amendment limiting the power of the Commissioners to the reloan of the instalments of Dutch debt becoming due in 1803, 1804, 1805, and 1806.

Mr. NICHOLSON said he offered this amendment to meet the ideas of gentlemen who considered the original provisions of the bill as vesting a power that might be exercised to the prolongation of the ultimate payment of the Dutch debt.

The amendment was agreed to without a division.

The sixth section, being under consideration, is as follows:

"And be it further enacted, That the Commissioners of the Sinking Fund be, and they hereby are, empowered, with the approbation of the President of the United States, to employ, if they shall deem it necessary, an agent in Europe, for the purpose of transacting any business relative to the discharge of the Dutch debt, and to the loan authorized by this or any other act, for the purpose of discharging the same; and also to allow him a compensation not exceeding three thousand dollars a year, to be paid out of any moneys in the Treasury not otherwise appropriated."

Mr. GRISWOLD said he did not see the necessity of an agent in Europe. The business had heretofore been well done by bankers. If an individual be sent, he may not be perfectly responsible in fortune or character. Mr. G. concluded by moving to strike out the sixth section.

Mr. RANDOLPH.—In answer to the gentleman I will read an extract from the report of the Secretary of the Treasury. He says: "For this purpose it would be necessary to give an express authority to the Commissioners of the Sinking Fund; and, in order to enable them to transact in the most advantageous manner, both that and any other business relative to that debt, it would be eligible to give them a power, if they shall find it necessary, to employ a special agent in Holland. The usefulness of that arrangement had been some years ago suggested by this department; and its necessity is now much increased by the increased extent of the payments and transactions in Holland relative thereto."

By this section no reflection is intended on the agents heretofore employed; their abilities have never been questioned. But it will be recollected that these agencies may be required in England, as the stock is generally lower in the Seven Provinces than in England. I should have expected that the appointment of a responsible agent would have been the last thing objected to. It is not proposed to make him our cashier, but to place him under the direction of the Secretary of the Treasury, to do whatever the interests of the United States require in relation to the debt. This, too, is a power, which is only to be exercised

when the Commissioners of the Sinking Fund shall think it necessary. Now, is it not strange to deny a power of appointing an agent at an expense not exceeding three thousand dollars, where you already have given the power of disposing of millions?

Mr. GRISWOLD.—I do not know whether the Commissioners will not have the power of appointing agents without this provision; but I am afraid that it may be intended, in this formal way, to transfer the payment of the debt from the bankers to this agent. I would, therefore, rather leave the business where it now is, to be exercised under the responsibility of the Commissioners of the Sinking Fund.

The question was then taken on striking out the sixth section, and lost—ayes 30, noes 38.

Mr. GRISWOLD.—If the object of the fifth section is only to get the bank to remit to Holland, I presume gentlemen will have no objection to strike out the words, "or individuals."

[Those words, in connexion, stand thus: "The Commissioners are empowered to contract, either with the Bank of the United States, or with any other public institution, or with individuals, for the payment in Holland of the whole, or any part of the Dutch debt."]

This power, said Mr. G., is very extensive. Nine millions are due in Holland, for the payment of which the Commissioners may make a contract with an individual, and, if he fail, the public may be obliged to pay the whole over again, and thus endanger the public property. I, therefore, move to strike out the words, "or with individuals."

Mr. RANDOLPH said he did not say that the sole object of the section was to enable the Commissioners to contract with the bank, though he presumed the Commissioners would prefer contracting with the bank. The gentleman surely did not mean it as a serious argument in favor of his motion, that the individual contracted with will run off and endanger the public property; as he knows that, at present, the Commissioners buy bills from individuals, and if they fail, the public loses. It is obvious, therefore, that this section increases the security of the Government.

Mr. GRISWOLD.—I have always thought it a bad mode of paying debts through contractors. I know that Government purchases bills from individuals, but I know that the amounts purchased are small, and, therefore, the loss inconsiderable that arises from the failure of an individual; but if you contract with individuals for the whole, if you lose at all, you will lose to an enormous amount. I believe Government will act right; but several things are said; it is said the French Government would wish to contract for the payment of the Dutch debt, and that we would advance the money to them here. I believe that that would be a very bad bargain.

Mr. BACON thought this power very different from that of buying bills. It must be a very important individual who shall be equal to the payment of this debt, and equal to securing the United States in any contract he may make with

APRIL, 1802.

Debt of the United States.

H. of R.

them. Mr. B. said that this was his opinion, though he might be mistaken.

Mr. RANDOLPH.—The gentleman is mistaken. This provision gives no power to the Commissioners to contract with an individual. They may negotiate with a number of individuals, in proportion to the number of whom the security is enhanced.

Mr. BAYARD moved to strike out all that part of the section (including the words to be stricken out by Mr. GRISWOLD) which authorizes the Commissioners to contract for the payment of the Dutch debt. He said he saw neither the necessity or utility of this provision for paying the debt, which must be made with individuals, or with bodies corporate. He wished to know why the Commissioners could not pay it themselves? He wished to know if the provision would have any other effect than to augment the sum paid; in fact to create two debts; for, by incurring the last, you do not expunge the first. By this section there is no limitation. The Commissioners may contract with individuals to pay the whole nine millions.

Mr. RANDOLPH.—I will ask one simple question. At whose risk are the payments now made? By whom are they now paid? It is very easy for one man to pay a debt to his neighbor; but if he has to make payment in Europe or India, it must be by others. There will, of course, be a risk; and even if he insures, he does not insure the solvency of the insurer. Does the gentleman mean to say that the actual payment of the foreign debt is not worth more than the nominal amount of it? If so, why have Congress offered to foreign creditors a transmutation of their demands into a domestic debt, with one-half per cent. increase? The French creditors availed themselves of the offer; but the Dutch creditors would not, and the whole present inconvenience arises from this refusal. You are now obliged to make payment in Holland, and yet the gentleman says such pay is worth nothing. What is this provision but saying that, instead of relying on the individual drawers of bills, we prefer to rely on the banks, or on a number of individuals?

The question was taken on Mr. BAYARD's motion to strike out, and lost—ayes 28, noes 42.

When Mr. GRISWOLD's motion recurred to strike out, "or with individuals;" which was lost.

Mr. BAYARD then moved the following amendment: "Provided the United States shall not pay more than the nominal amount of the debt, and the expenses thereon authorized by this act."

Mr. BAYARD.—My object now is very different from that which I had in the motion I previously made. Under this power the Commissioners may contract to pay twelve or fifteen millions instead of nine millions of dollars. I am not opposed to a liberal confidence in the Executive; but I am more disposed to trust our laws, to rely on ourselves, and we are surely unworthy of legislating when we cease to pursue our own judgments. I have no other view in this motion than to say that my sole object is to prevent the payment of more than the nominal amount of this debt. In

this amendment I have designated the expenses authorized by this law beyond the principal and interest. Now, I call upon gentlemen, if there are any proper expenses not designated, to designate them. Let them do this, and then we shall be acting upon ground that we understand. Do gentlemen want greater power than this? As the matter now stands, you may not only pay the principal and interest of the foreign debt, but a profitable job may be made of it. I do not mean to insinuate that any such thing is intended; but I do not see the propriety of giving more power than is necessary. I hope, therefore, that this amendment will prevail, and that we shall not give the unlimited power contained in the bill.

Mr. RANDOLPH.—I am sorry to be so troublesome to the Committee, but I deem it necessary to defend the bill against the objections of gentlemen who do not seem to understand it. The gentleman asks what risks are to be avoided by this provision? I will answer him; that very risk of making remittances, which has cost so much, and for getting rid of which half of one per cent. has been offered to be sacrificed. If the Commissioners, according to the gentleman from Delaware, wish to make a lucrative job, what have they to do but to give more than the value of bills? Is not the discretion given by the bill necessarily involved in the nature of the institution? They may now sell one-half the stock they issue for one cent in the dollar; and, by collusion, they may buy bad bills. These are the powers they now possess. It is evident, therefore, that the whole objection is futile.

Mr. GRISWOLD.—The object of the amendment is to limit the profit allowed to contractors. I do not see why we ought not to limit it. If the gentleman is disposed to allow a profit, let it be limited, and let them not grasp at too much. I do not believe it will be in the power of the bank, or of individuals, to make remittance better than the Government itself. I aver that this has been done under as good terms by the Government as it can be done by individuals. This has been the case heretofore, and it will undoubtedly continue to be the case.

Mr. BAYARD.—My object simply is to act on this subject as on all others. We are bound to our constituents to know the expenses attending this business before we allow them. Now I call upon gentlemen to say whether they are ready to pay, not only the amount of the debt, but all expenses, no matter however great, which may be incurred? We are told by the gentleman from Virginia, that we have given almost unlimited discretion to the Commissioners of the Sinking Fund, and the inference he draws from this fact is, that we should now take away all limits to discretion. We go on a different principle; we are willing to delegate all necessary powers; the power, for example, of purchasing bills; but we are not willing to convert a debt of nine millions into one of fifteen millions. Are gentlemen, in short, prepared to authorize expenses they know nothing about? This is a new doctrine, and particularly from gentlemen on the other side.

H. OF R.

Debt of the United States.

APRIL, 1802.

The question was then taken on Mr. BAYARD'S amendment, and lost—yeas 23, nays 42.

Mr. B. then moved so to amend the fourth section, by striking out certain words, as to prevent the bill from empowering the Commissioners of the Sinking Fund to borrow under the law of May, 1796, under a construction, which he contended the bill gave, that that act was in force. As soon as the year in which that act was passed was over, those debts were paid, and the act ceased; a Legislative construction that that act is still in force, may perhaps justify the Executive in considering it so. Suppose it is in force, there will be nothing in this act to repeal it. If the object is not, by a side-wind, to authorize the borrowing of five millions, under the idea that this act is still in force, gentlemen will have no objection to this amendment. This I affirm can be the only effect of the present provision. If gentlemen have this object let them avow it. I am, indeed, greatly surprised at these provisions in this bill. Its title is very splendid and promising; but when we come to the bill, we find it contains an authority to loan nine millions abroad, and to borrow five millions at home; and in this way gentlemen mean to extinguish the debt. I, therefore, do hope, that if it is not the intention of gentlemen indirectly to revive this loan, authorizing the borrowing of five millions, they will agree to my amendment.

Mr. RANDOLPH.—If the gentleman from Delaware can prove to me that the act of May, 1796, has expired, I should be the first to second his motion. But I am convinced that it has not, and cannot, so long as any instalment of foreign debt remains due. These are the terms of the act, which fix its duration. For my part I should be pleased to have it proved that it is not in force, and that there was no such power vested in the sinking fund, to create stock, as therein authorized, in any circumstances.

When the Committee draughted this bill, it became them to provide, that all the powers already vested in the Commissioners of the Sinking Fund should not be invalidated. Suppose, in this bill, such a provision should have been omitted, we would have been then told, that the public faith was endangered; that there was no telling what might happen in two or three years; and that, if this power were taken away, the Commissioners might be disabled from complying with the engagements of the Government with the public creditors. We should have heard of injuries inflicted on public credit, and of violation of the public faith! This provision has in truth no other effect than that of leaving things exactly where they are, and telling the courts that this present act shall not affect a previous law. This act, therefore, really does nothing. It is clear, however, to me, that the provision of the act of May, 1796, is still in force, and that you can only get rid of it in two ways, either by paying off all the instalments of foreign debt, or by the Commissioners' borrowing to the extent of the five millions.

The gentleman says, that while we profess to pay the public debt, we are calling, by side-winds,

for the power to borrow five millions. We say no such thing; we only say that the authorities of the sinking fund, heretofore given by law, shall not be affected by this bill. When we want loans, we will call for them directly. We trust that none of the provisions of the act of May, 1796, will be necessary, and that we shall not be obliged to create stock irredeemable till the year 1819, or to sell half the stock created at any market value below par. If the gentleman had examined attentively this proviso, he would have found it to be a thing of course, and copied almost verbatim from former acts.

Mr. GRISWOLD.—It is admitted that no part of this bill goes to repeal the act of May, 1796; that act, therefore, cannot be affected by this. I ask, then, why this section is introduced? Can it be introduced for no other purpose than to give the consent of the Legislature to the existence of that law? Is it proper to give a Legislative sanction to the continuance of the act of May, 1796? The gentleman from Virginia says, he would wish to see this power out of existence. Why, then, not leave it where it is? That the power has expired is evident from the words. They are: "That the Commissioners may borrow any sum not exceeding five millions of dollars, to be applied to the payment of the capital, or principal, of any parts of the debt of the United States, now due, during the course of the present year, to the Bank of the United States, or to the Bank of New York, or for any instalment of foreign debt."

The plain meaning of these words is, that the Commissioners may borrow, for any part of the debt now due, to or become due during the current year, first to the Bank of the United States, secondly to the Bank of New York, and, lastly, for any instalment of foreign debt. This is the plain meaning of the statute, and this must be the construction put upon it, for the authority to borrow is expressly confined to that year. It was not contemplated at the passage of the act that the power should be continued beyond the year. The fact is, we had contracted debts with the banks, and instalments of foreign debt were due; and to save our credit, a loan of five millions was authorized to meet these specific objects. It, therefore, is evident that this provision of the law of May, 1796, has expired, and the effect of the present provision of this law is to revive the power of making a loan of nearly five millions; for, under the act of 1796, the Commissioners only borrowed about eighty thousand dollars. I, therefore, hope the words will be stricken out.

Mr. BAYARD said he would only ask if the act was in force which gave authority to borrow five millions, whether the gentleman could have thought it necessary now to give the power of re-lending the instalments on the Dutch debt here, or in Europe? On this point he thought it was impossible to doubt. He beseeched gentlemen to examine the bill. He did not know who drew the bill. He presumed it was drawn by the chairman of the Committee of Ways and Means; but he was sure that he had introduced into it an idea not intended by him.

APRIL, 1802.

Debt of the United States.

H. OF R.

Mr. NICHOLSON.—The gentleman from Delaware asks, if the law of 1796 is still in force, where is the necessity of the power given in the present act to reloan the instalments of the Dutch debt? I will answer the gentleman in a few words. That power is necessary because the loan authorized by the act of 1796 is not reimburseable till the year 1819, whereas, under this law, the reloan of the Dutch debt are reimburseable within six years.

Mr. RANDOLPH.—If the gentleman from Delaware will look into the act of 1796, he will find that an indefinite power is thereby given to the Commissioners to borrow any sums to meet the instalments of debt become due, provided that no greater interest than six per cent. be allowed.

The question was then taken on Mr. BAYARD's motion, and lost—ayes 28, noes 37.

The Committee then rose, and reported the bill with one amendment, which was immediately agreed to.

Mr. BAYARD renewed his motion, made in Committee of the Whole, viz: to strike out, at the end of the fourth section, the following words:

"Provided always, That the power herein given shall not be construed to repeal, or affect the power given to the Commissioners by an act, entitled 'An act making provision for the payment of certain debts of the United States,' to borrow certain sums, and to sell the shares in the Bank of the United States belonging to the United States, in the manner, on the terms, and for the purposes authorized by the said act."

On which the yeas and nays were—yeas 27 nays 46, as follows:

YEAS—John Bacon, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, William Hoge, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Nathan Read, John Cotton Smith, Josiah Smith, Henry Southard, John Stanley, John Stratton, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.

NAYS—Willis Alston, John Archer, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Mr. BAYARD moved to amend the bill by adding to the end of the fourth section the following additional proviso, to wit:

"And provided further, That nothing herein contained shall be construed to revive any act, or part of an act, authorizing the loan of money; and heretofore expired."

Mr. RANDOLPH said he had no objection to the amendment; which was carried without a division.

7th CON.—38

Mr. GRISWOLD renewed a motion made by him in the Committee of the Whole, to strike out of the fifth section the following words, that are in italics, viz:

"That, for the purpose of more effectually securing the reimbursement of the Dutch debt, the Commissioners of the Sinking Fund may, and they hereby are empowered, with the approbation of the President of the United States, to contract either with the Bank of the United States, or with any other public institution, or with individuals, for the payment, in Holland, of the whole, or any part of the principal of the said Dutch debt, and of the interest and charges accruing on the same, as the said demands become due, on such terms as the said Commissioners shall think most advantageous to the United States; or"

Mr. G. called the yeas and nays, which were—yeas 26, nays 48, as follows:

YEAS—John Bacon, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Nathan Read, John C. Smith, John Stanley, John Stratton, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.

NAYS—Willis Alston, John Archer, Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Mr. GRISWOLD moved to amend the fourth section by inserting the words following, in brackets:

"Be it enacted, That the Commissioners of the Sinking Fund be, and they hereby are, empowered, with the approbation of the President of the United States, [in case the advance upon exchange between the United States and Holland shall exceed five per cent.; and in case difficulty shall occur in making remittance,] as any instalments, or parts of the principal of the said Dutch debt become due, to borrow on the credit of the United States, either in America or abroad, either by a reloan or prolongation of the loan heretofore obtained, or by new loan, the sums requisite for the payment of the said instalments, or parts of principal."

Mr. RANDOLPH moved to amend the foregoing amendment, by striking out the word "and," and inserting in lieu thereof the word "or."

Mr. GRISWOLD said the word "or" was a small word, but in this case it was a very important one, as it entirely defeated the object of his amendment. He must, therefore, request the yeas and nays on inserting it; which were accordingly taken as follows:

YEAS—Willis Alston, John Archer, John Bacon,

H. OF R.

Debt of the United States.

APRIL, 1802.

Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, and Robert Williams.—47

YAYS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, James Mott, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.—22

MR. BAYARD moved to amend the amendment. The word "difficulty" was so indefinite as to mean anything. He, therefore, moved to introduce, after the word "difficulty," the following words, "such as shall render it impracticable to make remittances of any instalments becoming due on the 'Dutch debt.'" Motion lost.

MR. NICHOLSON.—I voted against the motion of the gentleman from Delaware, because I considered it too vague to have any good effect; but as I am disposed to accommodate him in the adoption of his idea, I move further to amend the said amendment, as now amended, by striking out therefrom the words "difficulty shall occur in making remittances," and inserting, in lieu thereof, the words "such difficulties shall occur in 'making remittances, as in the opinion of the Commissioners, shall render the purchase of bills 'inexpedient.'" Carried without a division.

MR. GRISWOLD.—Can the question be divided on the amendment as amended? If so, I call for a division at the word "or."

MR. ELMENDORF.—I take it a gentleman cannot divide his own motion.

The **SPEAKER** decided that the question was divisible; whereupon the question was taken by yeas and nays, on the call of **MR. GRISWOLD**, on the first member of the amendment, as follows—"In case the advance upon exchange between the United States and Holland, shall exceed five per cent., or"—and lost, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, Nathan Read, John Stanley, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.—19

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister,

William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, and Robert Williams.—49.

MR. BAYARD.—The question is now on the second member of the amendment.

MR. RANDOLPH.—It falls of course with the failure of the first member.

MR. BAYARD.—I move to strike out the word "or."

MR. SPEAKER.—The word "or" was put in by a vote of the House; it is, therefore, not in order to strike it out.

MR. BAYARD.—I move, then, the amendment offered by the gentleman from Maryland, (**MR. NICHOLSON**), as a distinct motion.

MR. RANDOLPH considered the whole decided on, as the Chair had already determined.

MR. SPEAKER.—The motion of the gentleman from Delaware is not in order.

MR. BAYARD.—I have another amendment to offer. The sixth section provides for employing an agent abroad, whom it contemplates to give three thousand dollars a year. I can only consider this provision as intended to create an office, which some one is to fill, and to receive three thousand dollars a year. It is the doctrine of the day to reduce Executive patronage. We ought not, therefore, to knock down one office, and immediately establish another. We have lately put down one office at the Hague, which cost the nation four thousand five hundred dollars a year. The people were congratulated upon the saving. Circulars were written by honorable gentlemen, informing their constituents of it as a great thing; and now we impose upon those gentlemen the necessity of writing other circulars to state that another office is created with a salary of three thousand dollars. It is surely improper to give gentlemen this trouble. Is there any difference between an agent and a diplomatic character? I do not know but that the object may be to have a political agent for the Government to correspond with. If we had no occasion for a Minister, we can have no occasion for an agent. All the business required by this act can be done through a mercantile house, which must at all events be employed by the agent.

There are other parts of the bill from which I find, that though we are saving by parsimony in one hand, we are disbursing with prodigality in the other. One of the provisions of the bill allows one quarter per cent. for borrowing two millions, which commission will amount to six thousand dollars. With respect, however, to this section, I consider it as disbursing the public money unnecessarily. I therefore move to strike out the sixth section, which is as follows:

"And be it further enacted, That the Commissioners of the Sinking Fund be, and they hereby are, em-

APRIL, 1802.

Debt of the United States.

H. OF R.

powered, with the approbation of the President of the United States, to employ, if they shall deem it necessary, an agent in Europe, for the purpose of transacting any business relative to the discharge of the Dutch debt, and to the loan authorized by this or any other act, for the purpose of discharging the same; and also to allow him a compensation not exceeding three thousand dollars a year, to be paid out of any moneys in the Treasury not otherwise appropriated."

Mr. BAYARD called the yeas and nays on striking out, which were—yeas 18, nays 43, as follows:

YEAS—James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, Ebenezer Elmer, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, William Hoge, Benjamin Huger, Lewis R. Morris, James Mott, Nathan Read, John Stanley, Killian K. Van Rensselaer, and Robert Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Isaac Van Horne.

Mr. BAYARD moved to amend the fifth section, by striking out the word "fourth" and inserting the word eighth. Mr. B. said this was the commission allowed the agent of the commissioners for purchasing bills, &c. One fourth per cent. commission would on two millions amount to five thousand dollars. One eighth per cent. would amount to two thousand five hundred dollars, which he deemed a competent sum.

Mr. RANDOLPH.—The gentleman from Delaware is indeed grown extremely saving of the public money of late days! We are told that the amount of commissions on the purchase of two millions three hundred thousand dollars will be five thousand dollars. Let it, however, be remarked, that this great sum is to be purchased not by one individual, but by a great many, scattered all over the United States. It is true that the Bank of the United States has offered its services gratis. But it has appeared to me that the commission allowed in the bill is a small charge in the case of a provision like this, and that the individual who is entrusted with such a power ought to receive at least one-fourth per cent. Yet the gentleman inveighs against this as a vast extension of Executive patronage, and this under an Administration by whom hundreds of officers have been abolished. He says two mighty ones are created! I make no doubt but that such a system of patronage will rouse the indignation of the whole American people until it shall equal that of the gentleman from Delaware!

Mr. BAYARD.—This step, if taken, will be progressive. Two offices are now created. This is

the time to complain. I understand that more offices are to be made under the Judiciary system. I am very happy at the compliment of the gentleman from Virginia. If those who have been heretofore against expense are now prodigal of the public money, it is necessary to have some men who are economical of it. I do not know that the putting down one office is a reason for putting up other officers. This motion, however, is not for abolishing any office, but for giving two thousand five hundred dollars, which I think a liberal compensation, as the agent can purchase bills through the post office, as the purchase is confined to mercantile towns.

The question was then taken on Mr. BAYARD's motion, and lost—yeas 19.

The bill was then ordered to be engrossed for a third reading to-morrow.

THURSDAY, April 15.

Mr. EUSTIS, from the committee appointed on the twelfth instant, presented a bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the naval service of the United States; which was twice read and committed to a Committee of the Whole to-morrow.

Mr. BACON, from the committee to whom was referred, on the sixth instant, a letter from the Secretary of the Treasury, accompanying a communication from the Comptroller of the Treasury, and sundry documents relating to the claim of Comfort Sands and others, made a report thereon; which was read, and ordered to be committed to a Committee of the Whole to-morrow.

The House resolved into a Committee of the Whole on an engrossed bill to provide for the establishment of certain districts; and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; and, after some spent therein, the Committee rose and reported an amendment to the sixth section thereof; which was twice read, and, on the question being put thereupon, agreed to by the House.

Ordered, That the said amendment be presently engrossed, and, together with the bill, read the third time to-day.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the last mentioned bill: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. DAVIS, Mr. DENNIS, and Mr. ALSTON.

The House resolved itself into a Committee of the whole House on the bill to abolish the Board of Commissioners in the City of Washington, and

H. OF R.

Fulwar Skipwith.

APRIL, 1802.

to make provision for the repayment of loans made by the State of Maryland, for the use of the city; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time.

An engrossed bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes, was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill for the relief of Lewis Toudard; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

An engrossed bill to regulate and fix the compensation of the officers of the Senate and House of Representatives, was read the third time and passed.

The House went into a Committee of the Whole on the bill to establish the Board of Commissioners of the City of Washington and to provide for the payment of several loans to Maryland. The bill was reported without amendment, and ordered to a third reading to-morrow.

An engrossed bill to provide for the establishment of certain districts, &c., was read the third time, and passed.

The House went into Committee of the Whole on the bill to fix the compensation of the officers of the Senate and House of Representatives.

The several blanks were filled, on the motion of Mr. DAVENPORT, with the following sums: an annual allowance of two thousand dollars to the Secretary of the Senate and the Clerk of the House of Representatives; to the principal clerk of each House, one thousand three hundred dollars; to the engrossing clerk of each House, one thousand dollars; to the Sergeant-at-Arms of each House, eight hundred dollars; to the Doorkeeper of the House of Representatives; five hundred dollars, with a per diem allowance during the session of two dollars; and to the Assistant Doorkeeper of each House four hundred and fifty dollars, with a per diem allowance during the session of two dollars.

The Committee rose, and the House took up the report, agreed to it, and ordered the bill to a third reading—afterwards read a third time, and passed.

FULWAR SKIPWITH.

The House went into a Committee of the Whole on the bill for the relief of Fulwar Skipwith.

That part of the bill which allows compensation for stolen ingots was agreed to without a division.

The second section allows an annual compensation for consular services.

Mr. DAWSON moved to fill the blank with three thousand dollars.

This motion was opposed by Messrs. T. MORRIS, STANLEY, and BAYARD.

A motion was made to strike out the section, which prevailed—yeas 35, nays 18.

The Committee reported, the House immediately took up the report, and agreed to it, by yeas and nays—yeas 43, nays 26, as follows:

YEAS—John Archer, James A. Bayard, Phanuel Bishop, Thomas Boude, William Butler, John Campbell, Thomas Claiborne, Richard Cutts, John Davenport, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, John A. Hanna, William Helms, Archibald Henderson, William Hoge, Benjamin Huger, George Jackson, Michael Leib, Thomas Lowndes, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, James Mott, Anthony New, Thomas Plater, William Shepard, John Cotton Smith, John Smith, of New York, Samuel Smith, John Stanley, John Stewart, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, John Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Dawson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, Edwin Gray, Daniel Heister, Joseph Heister, James Holland, Thomas Moore, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, and Isaac Van Horne.

Ordered, That the said bill, with the amendment agreed to, be engrossed, and read the third time to-morrow.

UNITED STATES DEBT.

The bill for the redemption of the whole of the public debt was read the third time; when, on the question of passage,

Mr. DANA said that he should trouble the House with but a very few remarks. He considered this bill, so far as it was meant to be an efficient provision for the payment of the public debt, as unnecessary, as the provisions of former laws were completely adequate. When Government has once contracted a debt, and appropriated money to its discharge, there is wanted no special subsequent authority to recognise the full force of the obligation. But he should have no objection to add promise to promise, if the new promise were not connected with a power to make new loans and new foreign connexions and to create new foreign claims. He considered the provisions of the bill to be such as may eventually increase the debt, and lessen the responsibility of the public officers. It was on these grounds principally that he deemed it improper and unnecessary to pass the bill.

The question on the passage of the bill was then taken by yeas and nays, and stood—yeas 55, nays 19, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, Wil-

APRIL, 1802.

Debt of the United States.

H. OF R.

liam Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Archibald Henderson, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams

YAYS—Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, John Cotton Smith, John Stratton, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Mr. T. MORRIS moved to amend the title of the bill, by so altering it as to read, "An act making certain provisions in relation to the public debt."

Mr. DENNIS moved, and Mr. MORRIS agreed to, the addition of the following words, "and authorizing a reloan of parts thereof."

Mr. BAYARD supported, and Mr. VAN NESS, opposed the motion; when the question was taken by yeas and nays, at the call of Mr. T. MORRIS, on the joint amendment, and lost—yeas 26, nays 49, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodoros Bailey, Phanuel Bishop, Robert Brown, William Butler, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

On the question, that the title be, "An act making provision for the redemption of the whole of the public debt of the United States," it was resolved in the affirmative.

FRIDAY, April 16.

An engrossed bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the

State of Maryland for the use of the city, was read the third time and passed.

An engrossed bill for the relief of Fulwar Skipwith was read the third time and passed.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred, during the present session, the memorials and petitions of sundry calico printers in the city of Philadelphia and elsewhere, in the State of Pennsylvania; of sundry citizens of the States of New Jersey and Delaware; of sundry cordwainers of the States of Massachusetts and Delaware; of Samuel Corp; of sundry merchants of Richmond and Manchester, in Virginia; of sundry shoemakers of the town of Lynn, in Massachusetts, and of Thomas Stagg, jr., and Thomas Snell; and to whom it was referred by a resolution of the House, on the eighteenth of February last, "to inquire and report on the expediency of erecting a port of entry at the town of Beaufort, at present within the district of Newbern, in the State of North Carolina," made a report thereon; which was read: Whereupon,

Ordered, That the consideration of the said memorials and petitions, and resolution of the House, be postponed until the third Monday in November next.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

I now transmit the papers desired in your resolution of the sixth instant. Those respecting the Berceau will sufficiently explain themselves. The officer charged with her repairs states, in his letter, received August 27, 1801, that he had been led by circumstances, which he explains, to go considerably beyond his orders. In questions between nations who have no common umpire but reason, something must often be yielded of mutual opinion, to enable them to meet in a common point.

The allowance which has been proposed to the officers of that vessel being represented as too small for their daily necessities, and still more so as the means of paying, before their departure, debts contracted with our citizens for subsistence, it was requested on their behalf that the daily pay of each might be the measure of their allowance.

This being solicited, and reimbursment assumed by the agent of their nation, I deemed that the indulgence would have a propitious effect in the moment of returning friendship. The sum of eight hundred and seventy dollars and eighty-three cents was accordingly furnished them for the five months of past captivity, and a proportional allowance authorized until their embarkation.

TH. JEFFERSON.

APRIL 15, 1802.

The said Message was read, and together with the documents transmitted therewith, referred to Mr. EUSTIS, Mr. TALLMADGE, Mr. THOMPSON, Mr. CAMPBELL, and Mr. HANNA; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

LEWIS TOUSARD.

An engrossed bill for the relief of Lewis Tousard was read the third time: Whereupon, a motion was made to amend the bill, by adding to the end thereof the following proviso, to wit:

"*Provided*, That nothing herein contained shall be construed to sanction the conduct of any person who has made advances of money not authorized by law."

And, the question being taken thereupon, it was unanimously resolved in the affirmative.

Ordered, That the said amendment be presently engrossed, and, together with the bill, be read the third time.

The said amendment being brought in engrossed, the bill, as amended, was read the third time, and, on the question that the same do pass, it was resolved in the affirmative—yeas 63, nays 12, as follows:

YEAS—John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phaniel Bishop, Thomas Boude, Walter Bowie, Robert Brown, Thomas Claiborne, John Condit, Richard Cutts, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Daniel Heister, William Helms, Joseph Hemphill, Archibald Henderson, William Hoge, David Holmes, Benjamin Huger, Michael Leib, Thomas Lowndes, John Milledge, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, Nathan Read, William Shepard, John Smilie, John Cotton Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, George B. Upham, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

NAYS—Willis Alston, William Butler, Joseph Heister, James Holland, George Jackson, James Mott, Israel Smith, John Smith, of New York, Josiah Smith, John Stewart, Abram Trigg, and John Trigg.

COMFORT SANDS.

The House resolved itself into a Committee of the Whole on the report of the committee to whom were referred a letter from the Secretary of the Treasury, and sundry documents relative to the claim of Comfort Sands and others; and, after some time spent therein, the Committee rose and reported to the House their agreement to the first and second resolutions, and their disagreement to the third and fourth resolutions contained in the report of the select committee; which were delivered in at the Clerk's table, where the same were read, as follows:

1st. "*Resolved*, That provision ought to be made by law to authorize the Attorney General of the United States to agree with such person or persons, or with the legal representative or representatives of such person or persons, as are interested in an award or report of Isaac Roosevelt and others, referees between the United States and Comfort Sands and others, on the twenty-fifth day of October, one thousand seven hundred and eighty-seven, on a statement of a case which shall try and determine the validity of said award or report, before the circuit court of the United States, for such circuit as the Attorney General, and the persons interested as aforesaid, may agree to."

2d. "*Resolved*, That provision ought to be made by law to authorize the Attorney General of the United States, in case the said award or report shall be adjudged

to be binding on the United States, to agree on an issue or issues, either in law or in fact, which shall try the question whether William Duer and Daniel Parker, or either of them, were co-partners with the said Comfort Sands and others, in the contracts on which the said award or report was made; and, if so, whether all, or what part of the sums which are due from them, or either of them, to the United States, ought to be deducted from the sum awarded or reported, as aforesaid, under the proviso in the act of Congress passed the second day of March, one thousand seven hundred and ninety-nine, entitled "An act for the relief of Comfort Sands and others."

3d. "*Resolved*, That provision ought to be made, by law, to authorize the Attorney General of the United States, in case a decision shall be made against the validity of said award or report, to agree on the appointment, by the said court, of referees to decide conclusively (subject only to legal exceptions to be made before said court) on the merits of the original claim of said Comfort Sands and others, on which said award or report was founded.

4th. "*Resolved*, That provision ought to be made by law for the payment of any sum or sums which may be found due from the United States pursuant to these resolutions, and such proceedings as may hereafter be had conformably thereto."

The House then proceeded to consider the said report at the Clerk's table: Whereupon, the first resolution contained in the report of the select committee, to which the Committee of the whole House reported their agreement, being again read, was, on the question put thereupon, agreed to by the House—yeas 43, nays 36, as follow:

YEAS—John Bacon, Theodorus Bailey, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Daniel Heister, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Samuel L. Mitchell, Lewis R. Morris, Thomas Plater, Nathan Read, William Shepard, Israel Smith, John Cotton Smith, Samuel Smith, Henry Southard, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, Phaniel Bishop, Walter Bowie, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, Lucas Elmendorf, Edwin Gray, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, and Robert Williams.

The second resolution contained in the report of the select committee, to which the Committee of the whole House also reported their agreement, being again read, was amended at the Clerk's table, and, on the question put thereupon, as amended, agreed to by the House as follows:

Resolved, That provision ought to be made by law to authorize the Attorney General of the United States, in

APRIL, 1802.

Naval Appropriations.

H. OF R.

case said award or report shall be judged to be binding on the United States, to agree on an issue or issues, either in law, or in fact, which shall try the question whether William Duer or Daniel Parker, or either of them, were co-partners with the said Comfort Sands, and others, in the contracts on which the said award or report was made.

The third and fourth resolutions in the report of the select committee, to which the Committee of the whole House reported their disagreement, being again read, the question was severally taken thereupon, that the House do concur with the Committee of the Whole in their disagreement to the same, and resolved in the affirmative.

Ordered, That a bill or bills be brought in, pursuant to the first and second resolutions; and that Mr. BACON, Mr. THOMAS, and Mr. GODDARD, do prepare and bring in the same.

SATURDAY, April 17.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented, a bill to amend "An act to establish the compensation of the officers employed in the collection of the duties on imposts and tonnage," and for other purposes; which was read twice, and committed to a Committee of the whole House on Monday next.

[The bill among other provisions directs that hereafter the clear annual receipts of a collector shall not exceed 5,000, of a naval officer 3,500, and of a surveyor 3,000 dollars.]

The House resolved itself into a Committee of the Whole on the bill for the relief of the widows and orphans of certain persons who may have died, or may hereafter die, in the Naval service of the United States; and, after some time spent therein, the Committee rose and reported amendments thereto; which were severally twice read, and, on the question put thereupon, disagreed to by the House.

A motion was then made, and the question being put, to amend the said bill at the Clerk's table, by striking out the word, "seamen and marines," in the fifth line of the first section thereof, it passed in the negative—yeas 21, nays 45, as follows:

YEAS—Willis Alston, Theodorus Bailey, Matthew Clay, Richard Cutts, John Davenport, John Dennis, Abiel Foster, William Helms, George Jackson, Thomas Moore, Thomas Morris, Israel Smith, John Smith, of New York, Samuel Smith, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Peleg Wadsworth.

NAYS—John Archer, John Bacon, Phanuel Bishop, Walter Bowie, Robert Brown, William Butler, Thomas Claiborne, John Condit, John Dawson, Ebenezer Elmer, William Eustis, Calvin Goddard, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Archibald Henderson, James Holland, David Holmes, Benjamin Huger, Michael Leib, Thomas Lowndes, Samuel L. Mitchell, James Mott, Thomas Newton, jr., Thomas Plater, John Randolph, Nathan Read, William Shepard, John Smilie, John Cotton Smith, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton jr., John Stewart, John Stratton, John Taliaferro, jr., Samuel Tenney, George B. Upham,

John P. Van Ness, Killian K. Van Renselaer, Lemuel Williams, and Henry Woods.

The said bill was then amended at the Clerk's table, and, together with the amendments agreed to, ordered to be engrossed, and read the third time to day.

NAVAL APPROPRIATIONS.

The House went into a Committee of the Whole on the bill making appropriations for the Naval service for the year 1802.

Mr. RANDOLPH moved to fill up the several blanks in the bills with specified sums, which were all agreed to, the total of which amounts to nine hundred thousand dollars.

Mr. DANA moved to insert three hundred and five thousand dollars, for the purpose of timber, &c., for the seventy-fours, the sum in the first estimate in the Secretary of the Navy, instead of one hundred and ninety-five thousand dollars, in the last estimate.

Motion lost—yeas 14.

Mr. DANA moved to insert one hundred thousand dollars, for Navy docks, &c., the sum in the first estimate of the Secretary, instead of fifty thousand dollars, in the last estimate.

Motion lost—yeas 17.

Mr. EUSTIS moved to add a new section to the bill authorizing the Secretary of the Navy, with the approbation of the President of the United States, to carry the excess of any specific appropriation beyond the sum expended to the deficiency arising under any other specific appropriation of the bill.

MESSRS. RANDOLPH, MACON, and BACON, opposed; and Messrs. EUSTIS and S. SMITH supported the motion, which was lost.

The Committee rose, when

Mr. HUGER moved to disagree to the report of the committee for filling the blank for contingent expenses of the navy with fifty thousand dollars, with the view of filling it up with one hundred thousand dollars.

It is not my intention, said Mr. H., to go into an argument. The arguments assigned in Committee by two gentlemen, were sufficient to show the impropriety of cutting down so low the contingent fund. This is an extraordinary change in the opinion of the Secretary. I conceive that he had as great a regard to economy in the commencement of the session as he can have now. I cannot, therefore, understand with what view this change has taken place. We have seen, by his estimate offered in the preceding part of the session, that less was required than had been expended the preceding year; afterwards he offers another estimate that required \$200,000, less than the first; and now a still smaller sum is required. I have great confidence in our officers generally, and in the Secretary of the Navy in particular; but I am inclined to believe, in this business, he has not been left to his own mind. I was originally a friend to a Navy, and I think this is the time to cherish it. I have, notwithstanding, no objection to economical arrangements in the Army. I have accordingly voted for reducing the

H. OF R.

Naval Appropriations.

APRIL, 1802.

Army. That establishment you can repair in a short time. But not so with respect to the Navy, for the establishment of which you must prepare for years beforehand.

It seems, however, that \$200,000 must be saved, and that this department must be pared down, to the extreme injury of the country. We have heard from gentlemen, that two public vessels, now requiring repairs, will consume the whole of this \$50,000. If this be the case, is it right to make our appropriation so low as to provide for no other contingency? Is this right? Will gentlemen suffer our public vessels to rot for want of repairs? I do verily believe this will be the effect of this step. Is this the liberal support which ought to be given to a Navy? Suppose one of your national vessels meet a Tripolitan, must she not repair?

It is true, that we are obliged to keep up the establishment to satisfy the public sentiment; but we are at the same time doing that which will shake the Navy. I believe the first estimate proper, as it was made before the rage for economy was declared in this House. This is the most pitiful of all pitiful economies! If we are not to have a Navy, let us, in God's name, put it fairly and decidedly down.

Mr. S. SMITH.—If the gentleman's motion does not prevail, I will move an addition to the bill which will overcome his objection, and which, I hope, will meet the unanimous approbation of the House, viz: that any excess on the items for which appropriations are made beyond the actual expenditures, shall be applied to the repairing vessels injured in actual service.

Mr. HUGER.—I am opposed to the amendment of the gentleman. The effect of it will be, in order to meet one object, to starve several others. I wish the whole former estimate of the Secretary incorporated in this bill. I wish the live-oak timber to be procured now, for, unless it is, it will soon be cut down, as the land on which it grows is very valuable for rearing the article of cotton. No part of the appropriations are too great. I am for vesting a liberal discretion in the Secretary of the Navy and the President, and on their responsibility; and I think that a specific sum sufficiently great should be appropriated.

Mr. RANDOLPH.—This is one of those questions on which I did not expect to see any, or if any, so much warmth as has been manifested by my friend from South Carolina. I believe it would have been as well for the gentleman to have discussed the Army question, or any other question, in its proper place, and to have confined his remarks to the question now before the House.

He tells you that if a specific appropriation is necessary in one case it is necessary in all; and yet, in the next breath he tells you, that the contingencies for repairs are indeterminable; and yet he says it is as necessary to specify this appropriation, as it is to specify those for pay, for provisions, or for any other objects. I do not understand this.

Suppose every public vessel stranded, what becomes of the Navy, even with the appropriation

of \$100,000 for repairs? The truth is, that the Secretary has made his estimates upon ordinary circumstances, and the amendment proposed by the gentleman from Maryland will enable the Secretary to provide for any casualty, while it will not enable him to travel out of the sum appropriated; but simply to apply a certain sum, originally contemplated for one object, to another.

This is a very different result from that stated by the gentleman from South Carolina, who, I had flattered myself, would have had more respect for the House than to assert, as a matter of fact, that which is not fact. I assert that the effect of the bill will not be to starve the Navy. I state, what cannot be denied, that the head of that department, who is a warm friend of the Navy, has offered us an estimate of the sums required for the present year, which we are now about to adopt. The gentleman should be cautious and not speak in this way of our making pitiful attempts to reduce the Navy by indirect means. I do hope he will in future be more cautious, and speak in a style more becoming this House and himself.

The truth is, when we were for reducing the Army, we disbanded it by an open resolution; and we will do the same thing with respect to the Navy, when we think it proper to reduce it. For my part I am willing to support a Navy, so far as it is required by the welfare of the country. I am now for complying with the estimates of the departments; and when I am for doing this, am I to be told that I am for destroying, by pitiful means, that which the people love? I do not understand this language. I will only say that, in voting appropriations, I will vote what I think enough. If the Executive requires more than is necessary, I will vote less than they require. I believe, however, there is no danger of any Executive demanding too little; and I have no idea of forcing upon them money they do not want.

If the gentleman from South Carolina will act from his own motives, without criminating ours, the public business will go on better than it has hitherto done.

It remains with the gentleman to prove that \$50,000 is not sufficient, as well as to prove that his sum is sufficient. Until this shall be proved, I hope the present sum will be retained; and, if deemed important, that the ideas of the gentleman from Maryland will be adopted.

Mr. HUGER.—I certainly feel a great personal respect for the members of this House? But when we are arguing on political points, we must speak of the effects of particular measures, if not of the motives of those who urge them. I must express my surprise at the mode now recommended by the gentleman from Virginia, in wishing to confine this discussion to a particular point, as I believe no gentleman on this floor has more frequently employed his fertile imagination, in similar circumstances, in casting reflections upon others; in branding others with the charge of ragamuffins, &c. It is not, however, extraordinary that, when he is in and I out, he should be offended at the remarks made by me.

APRIL, 1802.

Naval Appropriations.

H. OF R.

The gentleman has mistaken me on the score of specific appropriations. I say let us make a specific appropriation, and make our officers responsible for a deviation from it; whereas he is for making specific appropriations, and for suffering the excess of all to be applied to the deficiency of one. I believe all the items are small enough, and that the effect will be to starve the Navy.

With respect to men in general, I believe that every Secretary of the Navy, or of any other department, will retrench the sums he may think necessary, if those around him say he must reduce them.

With respect to the Army, I repeat it, I am not tenacious. I voted lately in favor of reducing it, and it may, perhaps, be right to reduce it still lower. We have only reduced it by one thousand men less than we had when a bloody war raged in Europe. This is a mighty saving! a wonderful evidence of economy!

When I recollect that gentlemen on the other side are not friendly to a Navy; when I recollect to have heard a respectable gentleman from Virginia say he was not friendly to a Navy, though he was willing to give way to public opinion, I am justified in saying that I was afraid that the intention of gentlemen was to starve the Navy.

MR. DANA.—I understand the object of the motion is to appropriate \$103,000 instead of \$50,000, the sum at present in the bill. This is warranted by the estimate of the Secretary of the Navy. At the commencement of the session, when he could have no particular views impressed upon him, he had estimated \$103,000 as necessary for the contingent expenses of his department. I ask if that sum is less necessary now than it was then? Then Congress had not given power to the President to equip thirteen national vessels for the protection of our merchant vessels in the Mediterranean and the adjoining seas. We have had, it is true, a subsequent estimate of \$50,000; but has any gentleman explained the grounds of this change? If we are to repose confidence in the gentleman from Maryland, (MR. S. SMITH,) that the Emperor of Morocco is dissatisfied, shall we not probably have occasion for the employment of more ships in the Mediterranean, and will not the expense of their repairs be increased?

The least number of frigates we shall require will be four. Now, when we consider the disasters to which all vessels are subject, is it possible that \$50,000 will make them good, particularly when we consider their remote situation from this country? The gentleman from Virginia gives no reason for this change of estimate, but he charges my friend from South Carolina (MR. HUGER) with putting his opinion in opposition to that of the head of the department. If he had done so, had he not a right to do it? But he stands on higher ground. The Secretary says precisely what my friend says.

I make no doubt the gentlemen are for appropriating what they consider necessary; but some gentlemen may think no appropriation necessary. The contingent fund should be less circum-

scribed than any other article; for when the squadron is employed in a distant service, and when your agent draws bills for necessary repairs, will you dishonor them? Shall they be protested? And will you suffer your credit to sink below that of a merchant?

This bill proceeds on the idea of economy; but it is an economy only on paper. I consider it as a waste of public money; for if it is necessary to protect commerce, we must have a Navy, and if we have a Navy, we must pay for it.

I will explain my ideas with respect to specific and general appropriations. With regard to the Navy and Army, no man can predict the occurrence of calamities, when either is in actual service, whether we shall have a battle, and what shall be the event of it. And though it be admitted that there may be some estimate of the cost of a given force, yet when this expense is applied to particular objects, it is difficult to ascertain the precise sum required for each; the true way, therefore, is, in a state of war, to give a general sum, and suffer the specific appropriations made by Congress to designate the general ideas of the Government. But then it is necessary to have a contingent fund for each article. Now, I would prefer a specific sum for a general contingent fund, to one for each specific article.

I object, however, to this item, inasmuch as it is not enough to cover the objects contemplated. Four frigates will be the smallest possible number required—more may be wanted, if danger is apprehended from Algiers and Morocco. I rest, therefore, upon the belief that the Secretary of the Navy, when unbiassed by the opinions of others, stated this sum of \$103,000 as necessary.

The yeas and nays were then taken on agreeing to the report of the Committee of the Whole, to insert \$50,000, which was carried—yeas 39, nays 24, as follows:

YEAS—John Archer, John Bacon, Theodorus Bailey, Walter Bowie, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Ebenezer Elmer, Edwin Gray, John A. Hanna, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, and Isaac Van Horne.

NAYS—James A. Bayard, Thomas Boude, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, John Cotton Smith, Josiah Smith, John Stanley, John Stratton, Samuel Tenney, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

MR. HUGER moved to strike out \$195,000, appropriated for the purchase of timber. &c., with the view of inserting a larger sum, originally proposed by the Secretary of the Navy.

The question was taken on agreeing to the report to insert \$195,000, and carried—yeas 40.

The next appropriation applied \$50,000 to navy docks.

Mr. HUGER and Mr. DANA objected to this sum, and proposed the application of \$100,000.

The report of the Committee to insert \$50,000 was carried without a division.

Mr. S. SMITH moved a new section authorizing the Secretary of the Navy, with the approbation of the President, to apply any excess of the appropriation, beyond the expenditure of the specific sums appropriated, to the repair of vessels in actual service, if the exigency of the service shall require it; except the sums appropriated for purchase, &c., of timber for seventy-fours and for the improvement of navy yards and docks. The motion was lost.

The bill was then ordered to a third reading on Monday.

MONDAY, April 19.

An engrossed bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, was read the third time, and passed.

NAVY PENSIONS.

An engrossed bill for the relief of widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 34, nays 29 as follows:

YEAS—John Archer, James A. Bayard, Thomas Boude, Walter Bowie, Manasseh Cutler, John Davenport, John Dawson, John Dennis, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Daniel Heister, William Helms, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Newton, jr., Thomas Plater, Nathan Read, William Shepard, John Smith of Virginia, Josiah Smith, Samuel Smith, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Aston, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Mathew Clay, John Condit, John Fowler, Edwin Gray, Joseph Heister, James Holland, George Jackson, Michael Leib, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith of New York, Henry Southard, Richard Stanford, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, and Robert Williams.

COMPENSATION OF COLLECTORS.

The House went into Committee of the Whole on the bill to amend the act fixing the compensation of officers employed in the collection of duties on imposts and tonnage.

This bill allows certain compensations to collectors of ports, provided the clear annual receipt does not exceed \$5,000. A motion was made to strike out \$5,000, for the purpose of introducing \$4,000.

It was contended that this latter sum was suffi-

cient compensation to any collector; that it greatly exceeded most of the compensations allowed to the Federal officers; and that as money was appreciating, it became necessary to reduce the salaries of officers generally.

In reply, it was observed that very few collectors would receive so large a sum as \$5,000—none other than those of New York, Philadelphia, Baltimore, and perhaps Charleston; that the responsibility attached to these officers was greater than that attached to any other, as in some instances two millions of dollars passed through their hands; that the temptation to violate duty was proportionably great; and that, from these considerations, it became the Government to afford them a liberal compensation; and that the sum was considerably below that heretofore allowed.

The question was taken on striking out \$5,000, and lost—yeas 26.

Mr. STANLEY moved to strike out that part of the bill which deducted from the compensations made to the collectors of Newbern and Edenton, the sum of \$250, heretofore allowed beyond their fees.

For this motion he assigned several reasons: among which were the inadequacy of the compensations, viz: about \$1,600 to the duties performed, which were, notwithstanding the small amount of duties, very burdensome, owing to the smallness of the cargoes imported, and theirs being greatly inferior to the compensations allowed to the collectors of Wilmington and Petersburg.

Mr. S. SMITH informed the Committee that the principle on which the several compensations had been graduated was, that when the gross emoluments exceed \$2,000, the salary heretofore allowed by law, in addition to the emoluments, should be withdrawn. This was the fact in relation to the ports of Newbern and Edenton; and as the duties in each of these ports did not exceed \$45,000, the compensation seemed adequate; he was, however, far from being tenacious, and would have little objection to a vote of the House which should increase it. Motion lost—yeas 25.

The Committee rose, and reported the bill without amendment.

Mr. SOUTHARD renewed the motion to strike out \$5,000, for the purpose of inserting \$4,000, (the same motion made in Committee,) and assigned substantially the same reasons above stated.

MESSRS. STANLEY, BACON, and SMILIE, delivered a few observations for, and Mr. HUGER against, the motion, which was taken by yeas and nays, on the call of Mr. SOUTHARD, and lost—yeas 31, nays 40, as follows:

YEAS—John Bacon, Phaniel Bishop, Robert Brown, William Butler, Mathew Clay, Richard Cutts, John Davenport, Lucas Elmendorf, Ebenezer Elmer, John Fowler, John A. Hanna, Joseph Heister, James Holland, David Holmes, George Jackson, Michael Leib, Thomas Moore, Anthony New, John Smilie, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jun., John Taliaferro, jun., Benjamin Tallmadge, David Thomas, Abram Trigg, John Trigg, and Robert Williams.

APRIL, 1802.

Judiciary System.

H. OF R.

NAYS—Willis Alston, John Archer, Theodorus Bailey, James A. Bayard, Thomas Boude, John Condit, Manasseh Cutler, John Dawson, John Dennis, William Dickson, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Daniel Heister, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, James Mott, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, Nathan Read, William Shepard, Israel Smith, John Smith of New York, Samuel Smith, John Stratton, Samuel Tenney, Philip R. Thompson, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Mr. GODDARD moved an amendment providing that no collector should be allowed a greater sum for clerk hire than the amount of his own emoluments. Lost—yeas 28.

The bill was then ordered to be engrossed for a third reading.

JUDICIARY SYSTEM.

The House went into a Committee of the Whole, on the bill to amend the Judicial system of the United States.

The first section being under consideration, as follows:

"That, from and after the passing of this act, the Supreme Court of the United States shall be holden by the justices thereof, or any four of them, at the City of Washington, and shall have one session in each and every year, to commence on the first Monday of February, annually, and that, if four of the said justices shall not attend within ten days after the time hereby appointed for the commencement of the said session, the business of the said court shall be continued over till the next stated session thereof: *Provided always*, That any one or more of the said justices attending as aforesaid, shall have power to make all necessary orders touching any suit, action, writ of error, process, pleadings, or proceedings, returned to the said court or depending therein, preparatory to the hearing, trial, or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings."

Mr. BAYARD moved to strike out "one session," and insert "two sessions."

Mr. B. said, he did not know any necessity why the Supreme Court should not be allowed to sit but once a year. We know that, by the system of 1789, there were two sessions; and that, under every modification of that system there have been two sessions. We know that this court has original jurisdiction in many cases, and that this arrangement will subject suitors to much delay. He knew not from what analogy this system is derived. He knew that the inevitable delays of law are sufficient of themselves, and he should think that system improper which multiplies the delays and vexations to which every system is inevitably subject. It will be recollected that it is impossible to bring a suit to trial the first term. He observed, by this bill, that a certain mongrel court is contemplated, to consist of one justice, vested with power to take preliminary steps without authority to take final ones. When the justices of the Supreme Court had to perform more laborious duties than they will have to perform under

this system, they sat twice a year. They then went from one end of the Union to the other; whereas they are now to be confined to two States. He knew not why suitors are now to be deprived of the advantages they then possessed. He therefore hoped the provisions of the former system would be agreed to.

Mr. NICHOLSON.—I hope the amendment will not prevail. When the gentleman observed that inconveniences would exist under the provisions of this bill, he ought to have pointed them out. For my part I see none. In last June term, there were only eight cases before the Supreme Court. Now, if it is necessary to call the justices of the Supreme Court together twice a year, from all parts of the Union, to try eight cases, I confess I am at a loss to assign the reason for the necessity. Suppose the number of cases should double, for it is probable they will vary from a larger to a lesser number? Suppose, then, they should enlarge to double the number, will it not be infinitely more to the ease of the judges to stay four weeks, once a year, than to stay two weeks twice a year? Nor do I know that any delay will happen in the administration of justice. For one judge is to remain here in the recess to receive pleas, grant rules, &c., and, if any original actions are commenced, they are to take test from the first of August, equally with the first of February, according to the time of the year when they are brought. The pleadings may be filed, and all the preliminary steps taken in August, as well as in February. All the necessary orders may be given, as well in the recess as during the sittings of the court. It is barely possible, in some cases, that a delay of six months may happen, and that is all; though I do not know that ever that will occur.

Mr. BAYARD.—I thought I had pointed out an inconvenience, the greatest that can attend the administration of justice; I mean a delay attending the trial of causes; equal nearly to a denial of justice. A cause can rarely be brought on the first term, and then there will be no possibility of a trial for a year, whereas if there are two terms, it may be decided upon in six months. The bill says there is no difference between six and twelve months' delay. What temptation does this present to counsel? It is known that appeals are frequently made for the purpose of delay; and if the artifice, delay, can be accomplished for a term, they will gain an entire year. Is this no advantage to a man who has the money of another in his hands, which he does not want to pay?

What is the answer of the gentleman from Maryland? The convenience of the judges will be promoted by this arrangement! This is a laudable spirit, and I am glad to see it come from gentlemen on the other side of the House. But, in my opinion, the justices ought to regard the convenience of the community; and the single question is, whether he will consult the convenience of the justices, or that of the community? I would wish to consult both; but when it interferes, the convenience of the judges must give way to that of the community.

The gentleman from Maryland has mentioned

the paucity of causes before the Supreme Court. But I do not know that a paucity of causes at the end of a term is an evidence of a little business. I do know, from attending the court, that business was left undone at one term that required one week, and at the last term that required two weeks to complete. Besides, the causes decided, though few, are of vast importance. One cause was determined the last term to the amount of \$180,000. The delay of such a cause might ruin one man, or make the fortune of another.

I do not know that this amendment will interfere with the other provisions of the bill, and I can therefore see no reason against adopting it.

Mr. NICHOLSON.—I said there was a possibility of a delay of six months being incurred by this bill. But I do not consider it as so great a hardship as the gentleman does. I do not know the regulations in the Supreme Court for the continuance of causes. But I know that, in Maryland, a cause on appeal may rest for two years. Nor do I think it correct to hurry on a suitor to trial the first term. Besides, in the Supreme Court, under the provisions of this bill, there will be no necessity imposed on the suitor to attend at the August term, the counsel can make the necessary arrangements. I do not speak with absolute certainty when I say that there has been no original cause brought in the Supreme Court. In the State courts few causes are tried the first year; one year, therefore, can be considered as but a small delay; and, in a case where \$180,000 is depending, I will ask if the court would order a party unprepared, to go to trial the first term?

Mr. GRISWOLD.—We probably judge of the reasonableness or unreasonableness of delay by the practice of the States from which we severally come. In the State I come from, it has been thought unnecessary to allow one term for delay in the case of writs of error. Because the errors being of record, the defendant always knows the reason on which the appeal is founded. The same principle applies to the courts of the United States. The arrangements of the bill generally produce a postponement of twelve, and at any rate, of six months. In some cases this will be a great hardship, and in others it may ruin the parties. I therefore think it important that the Supreme Court should sit twice a year. On appeals there can be no necessity for delay, as no new facts are to be tried, and all that is required is a decision on points of law.

Mr. NICHOLSON said, he did not pretend to know the course of proceeding in the courts of Connecticut; but in no court, with whose proceedings he was acquainted, did he know the reasons of error assigned on the record.

Mr. DENNIS.—It appears to me, from the provisions of the bill, the Supreme Court may in future be more properly called a court of injustice than a court of justice. I have always thought the delays in the courts of Maryland a great grievance, where, in the case of a simple undisputed bond, a delay may take place of four years. I feel, therefore, no desire to accommodate the system of the United States to that of Maryland; but rather to

conform the system of Maryland to that of the United States. I know that the disposition of the defendant is of itself sufficient to produce delay, without any legal aid. I will challenge my colleague, or any other man, to show me a court of appeal that sits but once a year. In such courts it had been usual to assign errors the first time, and try the next. Gentlemen should recollect that, in this District, an appeal lies in all cases above one hundred dollars. The delay in the Supreme Court will certainly encourage appeals, which may be excellent for the counsellors, however unjust or oppressive to the community.

Mr. NICHOLSON.—I will only say, that if it has heretofore been the practice of the Supreme Court to assign errors the first term, this bill does not abridge that power. They may be stated the first term, and the only delay that can occur will be for one year instead of six months.

Mr. ELMENDORF.—It appears to me that the arguments of gentlemen do not apply to the Supreme Court. It is not pretended that this court is calculated for the trial of original causes, but barely for the correction of errors. And, it seems to me, that more delay will be effected by having two terms a year than by having one; for the number of causes actually tried will depend much more on the length than the frequency of terms. If there shall be but one sitting a year the justices will consider themselves under an obligation to try all the causes before them. It will also be recollected that delays in this court, under its present organization, are only to be affected by rules of court and not by our laws.

I wish to know, whether the causes that are likely to arise will not come up from every part of the Union; not merely from Maryland, as might be inferred from the remarks of one gentleman? I would ask, if this be the case, whether the greatest of all possible inconveniences will not result from the frequency of terms? When the counsel are obliged to come on two or three times a year instead of once, will not the expense to the suitor be greatly increased?

It is decidedly my opinion that the expediting of business will principally depend upon the length of the term and the urgency with which the justices push forward the trial of causes.

In the State of New York, the court of last resort sits but once a year; and no inconvenience has been experienced. They sit during the session of the Legislature, and no cause is ever postponed without a sufficient cause for the delay. If, then, we consider that by this bill the inconvenience of a frequent attendance at court is removed, and that the certainty of a trial, perhaps at the first term, is insured, in my opinion we must conclude that this plan is better calculated to expedite business, and to accomplish the due administration of justice, than the having more frequent sessions, sessions which will be shorter, and in which business cannot be so well done.

Mr. HENDERSON.—Whatever reasons may have influenced gentlemen in bringing forward this bill, I did not expect to hear assigned among them that the frequency of terms is calculated to delay

APRIL, 1802.

Judiciary System.

H. OF R.

the administration of justice. If this amendment is not acceded to, the inevitable effect will be that hereafter the docket will be crowded, however it may have been heretofore. It will be recollected that the court is bound to exercise a legal discretion, and whenever a party desires a postponement, the court must decide according to this discretion; and I beg to know whether there will not exist the same reasons for delay when there is but one term a year, that exist when there are two? Must not the court be governed by the same rules in both cases? If so, the chance of getting a cause tried is not in proportion to the paucity of terms.

The gentleman from New York thinks the paucity of terms will prevent delay. But, how can this be? May not suitors in all cases, for sums above \$20,000, appeal; and may they not continue their suits from term to term? So also as to writs of error which may be brought as to facts as well as law; this will operate as a complete superseas. It seems to me wrong to institute courts for the administration of justice, and only give the citizen an access to them once a year. And if but one term a year, why not, on the same principle, have only one term in two or three years? The same arguments urged in favor of the former might, with equal force, be applied to the latter. He therefore hoped such inconclusive arguments would not prevail.

Mr. ELMENDORF.—My ideas on this subject may, perhaps, differ from those of other gentlemen, from the different practices that prevail in different States. It is a fact that, in the State of New York, an appeal cannot be made barely for the purpose of delay. There a writ of error cannot be obtained unless two counsellors, after examination of the record, declare that, in their opinion, there is a material error. And if you make provision, by law, that no removal shall, on the allegation of error, for the mere purpose of delay, take place, will not the court be bound by it? This is the only argument I have heard on the other side, and I have answered it by stating the practice in the State of New York.

Mr. T. MORRIS said that, when his colleague had stated that the Court of Appeals in New York sits but once a year, and that no inconvenience had been experienced, he ought to have added that the court sits as a branch of the Legislature about three months. It follows that inconvenience may not occur there, though it should elsewhere. Having heard no reason for this innovation, he should vote for the amendment.

Mr. R. WILLIAMS.—In addition to the reasons already assigned, I will add that this amendment, if adopted, will derange the whole system. It is possible that, on this plan, there may be delay. I will add that this amendment, if adopted will derange the whole system. It is possible that, on this plan, there may be delays, as it is impossible to organize any system without delay. But I believe that, in legislating, we ought to regard the interests of the whole people. I believe that the causes in the Supreme Court, compared with those in the circuit courts, are very few. If, therefore, this plan insures the holding two circuit courts an-

nually, we ought of preference to suffer a slight inconvenience to exist in the Supreme Court. As to delay, it is not, in general, to be ascribed to the badness of the laws, but to the ingenuity of counsel. There are now but eight causes on the docket of the Supreme Court. Gentlemen say they will increase. If they do, we will have no objection to give that court two sessions. But I have a different opinion. I believe this system will have a different effect, and that it will not increase the present monstrous mass of business! It often happens that reasons for postponement arise from the parties not having time to bring forward their evidence. This cannot occur when the terms are at the distance of a year from each other.

Mr. BAYARD replied to Mr. WILLIAMS, recapitulated his preceding remarks, and concluded by observing that as the old system which gave two sessions to the Supreme Court, had not been complained of either by lawyer or suitors, it appeared to him that the present object was to make Federal justice so inconvenient that suitors would be obliged to abandon the courts of the United States. He asked, if the effect would not be to deteriorate the system, so as to make it odious to the people?

Mr. DANA delivered his sentiments in favor of the amendment.

Mr. HOLLAND.—Gentlemen say, a delay of justice will be a denial of it, and immediately afterward add, that the demands for which suits are instituted in the Supreme Court, are very large. I take it for granted that where the demand is great, the delay should be proportionably long. On this principle we have practised in North Carolina. The great distance, too, of most of the citizens from the seat of Government, is an argument for the paucity of the terms, from the great trouble imposed upon the counsel and suitors. The gentleman from Delaware had lately told us that the convenience of the judges was to be consulted; but now he says, their convenience is not to be regarded. So that, let us form the bill as we please, gentlemen will not be satisfied with it in any shape. I therefore consider the motion made as barely intended to defeat the whole bill.

Mr. ELMENDORF observed that the term of the Supreme Court was so fixed as to occur during the session of Congress. He observed that a system of justice ought to be so constructed as to be convenient to the United States; and so that the assistance of counsel could be obtained at the cheapest rate, and who were acquainted with the parties. This will be the case under the new system. This argument in favor of it is invincible; it has not been answered. There are gentlemen of the law from most of the States, who are members of Congress, which will greatly contribute to the convenience of suitors in the most remote States, and particularly as the presence of suitors is not necessary in the decision of questions of law on appeals.

As to the opposition made to this bill, do not gentlemen see who oppose it? They are those who reside in or near this place—gentlemen of the bar, who will monopolize the whole busi-

H. OF R.

Judiciary System.

APRIL, 1802.

ness of the courts, and who naturally think the more the terms the better for them.

Mr. SMILIE believed gentlemen forgot that the session was drawing near to a close. He hoped the question would be taken without further debate.

The question was then taken on Mr. BAYARD's amendment, and lost—ayes 26.

Mr. BAYARD moved to strike out the third section, which directs that all suits returnable or continued in the Supreme Court from December term to June term, shall be continued over to August term.

He considered this provision as predicated on injustice. It operated to continue the suits for more than a year. This is the effect of this mighty potchery of legislation! Where suitors are entitled to trial in six months, they are denied even a hearing for fourteen months. He believed this was unprecedented in this or any other country. Will gentlemen say why these causes cannot be decided in June? As the justices expected to meet, as the suitors expected to have their causes tried in June next, if hereafter we are to have only one session, why interpose by a new repealing law, to affect a law which is not at present to be repealed till the first of July?

The question was then taken on Mr. BAYARD's motion to strike out, and lost—ayes 23.

TUESDAY, April 20.

Mr. BACON, from the committee appointed, on the sixteenth instant, presented a bill relating to the claim of Comfort Sands and others; which was read the first time: Whereupon, a motion was made, and the question being put, that all further proceeding in the said bill be postponed until the third Monday in November next, it was resolved in the affirmative.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

*Gentlemen of the Senate, and
of the House of Representatives:*

The object of the enclosed letter, from the Director of the Mint, at Philadelphia, being within Legislative competence only, I transmit it to both Houses of Congress.

TH. JEFFERSON.

APRIL 20, 1802.

The said Message, and letter therewith transmitted, were read, and ordered to be referred to the Committee of the Whole House to whom was committed, on the second instant, the bill to repeal so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States;" the other an act, entitled "An act supplementary to the act establishing a Mint, and regulating the coins of the United States," as relate to the establishment of the Mint.

Another Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

I transmit you a report from the Secretary of State, with the information desired by the House of Repre-

sentatives, of the eighth of January, relative to certain spoliations, and other proceedings therein referred to.

TH. JEFFERSON.

APRIL 20, 1802.

The said Message was read, and, together with the papers referred to therein, ordered to lie on the table.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act further to alter and establish certain post roads," with several amendments; to which they desire the concurrence of this House.

Mr. NICHOLSON, from the Committee of Ways and Means, presented a bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. DAVIS, from the committee to whom was committed, on the fifteenth instant, the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" reported that the committee had had the said amendments under consideration, and directed him to report to the House their agreement to the same.

An engrossed bill amending an act fixing the compensations of officers employed in the collection of duties on imports and tonnage, was read the third time, and on the question, shall the bill pass? Mr. STANLEY, considering the compensation of \$5,000 too high for any collector, and the compensations in other respects as unequal, moved the recommitment of the bill. Motion lost—ayes 21.

The bill then passed without a division.

The House again went into Committee of the Whole on the bill to amend the Judicial system of the United States.

Mr. DAVIS moved to amend the fourth section, by constituting an additional circuit, to be called the seventh circuit, composed of the States of Kentucky and Tennessee, his object being that the circuit court therein should be composed of the district judges of Kentucky and Tennessee. Motion carried—ayes 40.

Other amendments were made affecting the details of the bill.

Ordered, That the said bill, with the amendments, do lie on the table.

WEDNESDAY, April 21.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" to which the select committee, to whom they were referred, reported their agreement on the twentieth instant: Whereupon,

APRIL, 1802.

Judiciary System.

H. of R.

Resolved, That this House doth concur with the committee in their agreement to the amendments of the Senate to the said bill.

Ordered, That the Committee of the whole House, to whom was referred, on the fifth instant, a motion, in the form of a resolution of the House, "respecting the registry of ships or vessels, two-thirds of which shall have been, or may be rebuilt within the United States, of American materials, and belonging wholly to a citizen or citizens of the United States," be discharged therefrom; and that the further consideration of the said motion be postponed until the third Monday in November next.

Mr. BAYARD moved the taking up for consideration, a motion made yesterday by him for the adjournment of the two Houses on Monday next. The question was put on taking it up, and lost—ayes 33, noes 39.

Mr. VAN NESS moved the order of the day, on the going into the Committee of the Whole, on a resolution some time since laid by him on the table, respecting the registering of vessels, &c.

Messrs. HUGER and GRISWOLD opposed the taking up this resolution, from the lateness of the session, and moved a postponement of it to the fourth Monday in November. Postponement carried—ayes 51.

JUDICIARY SYSTEM.

The House then took up the amendment of the Committee of the Whole, reported yesterday, to the bill "to amend the judicial system of the United States."

The first amendment was as follows: "And so much of the act entitled 'An act to establish the judicial courts of the United States,' passed September 24, 1789, as provides for the holding a session of the Supreme Court on the first Monday of August annually, is hereby repealed."

On agreeing to this amendment,

Mr. BAYARD called for the yeas and nays. He said it was not his intention to consume the time of the House, by repeating the arguments which had been made, without being answered in the Committee of the Whole. He would barely observe that the giving to the Supreme Court one session instead of two, was in a great measure a denial of justice to suitors, and would operate with peculiar injustice on the present suitors.

Mr. MORT declared himself against the amendment, inasmuch as it betrayed great inconsistency in the acts of the Legislature. He believed the law lately passed, respecting the Judiciary system established last session, was right. That law restored the system of 1789, under which two sessions of the Supreme Court were annually held. The repeal, not operating till the first day of July, did not affect the ensuing session in June. If the repealing law was right, we must now be wrong. For this reason, and for others, Mr. M. declared himself against the amendment.

The yeas and nays were then taken on the amendment, and carried—yeas 44, nays 29, as follows:

YEAS—Willis Alston, John Archer, John Bacon,

Theodorus Bailey, Phaniel Bishop, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, Richard Cutts, William Dickson, Lucas El-mendorf, Ebenezer Elmer, Wm. Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, George Jackson, Michael Leib, Samuel L. Mitchell, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Robert Williams.

NAYS—James A. Bayard, John Campbell, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

The second amendment established an additional circuit, to be called the seventh circuit, consisting of Kentucky and Tennessee.

Mr. ALSTON said he should be impelled to vote against this amendment, unless it should be shown that it would not materially interfere with the subsequent details of the bill, which, he was at present inclined to believe would be the case.

Mr. DAVIS said it was far from his intention unnecessarily to consume the time of the House. He begged, however, that the arguments which he had yesterday urged in committee would be attended to by gentlemen. He begged gentlemen to respect the rights of Kentucky and Tennessee, which were equal to those of the other States, all of whom, excepting Maine, were allowed the benefit of circuit courts. The only object of the amendment was to unite the labors of the district judges of Kentucky and Tennessee, without incurring the least additional expense. He defied gentlemen to assign any reasons against extending this benefit to Kentucky and Tennessee. Gentlemen may assign certain motives, but they cannot assign arguments for the refusal.

Mr. FOWLER said he had never heard of the existence of any complaints respecting the system, as it would stand, without the amendment of his colleague. He believed it was perfectly satisfactory. As to the motives to which his colleague alluded, he knew of none himself, other than those which were connected with the general good. If his colleague knew of any other, he supposed he would name them.

Mr. THOMPSON stated the contents of a letter received by him from Judge Innes, stating the small number of suits depending in the district of Tennessee, and stating the great distance which the judges would have to travel in case of a circuit being established, from which Mr. T. inferred the uselessness of such a court.

Mr. DAVIS replied, and observed, that he knew that a majority, whether right or wrong, will decide as they please; as to the motives to which

H. OF R.

Judiciary System—Post Office Bill.

APRIL, 1802.

he had alluded, gentlemen could be at no loss to understand him; he believed that another session of Congress would unfold those motives.

The question was then taken on the amendment, and lost—ayes 34, noes 42.

Mr. BAYARD moved to recommit to a select committee the sixth section, which is as follows:

"That when the judges of any circuit court upon the final hearing of a cause, or of a plea to the jurisdiction of the court, shall be divided in opinion, the Supreme Court upon being notified by the circuit court thereof, shall, at their session to be held next thereafter, assign one other of the justices of the Supreme Court whose duty it shall be to attend accordingly; and upon a second hearing of the said cause the judgment or decree shall be entered up in conformity to the opinion of the court, to be composed of the justice so assigned for the division thereof, and of the judges of the said circuit court: *Provided, nevertheless,* That all questions arising in criminal cases and submitted to the court, shall, in case the court shall be divided in opinion, be considered as adjudged in favor of the prisoner; and if the court shall be divided upon the final judgment or sentence, judgment shall be entered up in favor of the prisoner, and he or she forthwith discharged."

Mr. BAYARD stated several points wherein he conceived the section defective; others were stated by Mr. GRISWOLD.

The recommitment was urged by Messrs. BAYARD, GRISWOLD, R. WILLIAMS, and NICHOLSON; and opposed by Messrs. ELMENDORF, S. SMITH, and SMILIE.

The recommitment was carried—ayes 45; and a committee immediately appointed, consisting of Messrs. BAYARD, NICHOLSON, and R. WILLIAMS.

At the close of the sitting, Mr. BAYARD reported the following substitute for the sixth section:

"That whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court, at their next session to be held thereafter; and shall, by the said court, be finally decided. And the decision of the Supreme Court, and their order in the premises, shall be remitted to the circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided,* That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits: *And provided also,* That imprisonment shall not be allowed nor punishments in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment."

Consideration postponed till to-morrow.

POST OFFICE BILL.

The House took up the amendments of the Senate to the Post Office bill.

Among these amendments was one instructing the Postmaster General to establish, if necessary, at the public expense, a line of stages for the car-

rying of the mail. On this amendment an interesting expression of opinion took place on the propriety and policy of extending the accommodations of the Post Office Department.

Mr. ALSTON moved to qualify the amendment by a restriction, that the measures contemplated in the amendment should be authorized only so far as the funds of the Post Office Department would admit. Motion lost.

Mr. S. SMITH and Mr. HUGER supported the amendment.

Mr. GRISWOLD and Mr. EUSTIS opposed the amendment on the ground of the expense that would arise to the public, and from the present season being premature.

Mr. MILLEDGE contested the remark of Mr. GRISWOLD in relation to expense. To gain information, Mr. M. moved to refer the amendments of the Senate, undecided upon, to a select committee.

Mr. ELMENDORF spoke for, and Mr. HOLLAND against the commitment. Motion to commit lost—ayes 18.

Messrs. HOLLAND, ELMER, and ELMENDORF, spoke against, and Mr. MILLEDGE for agreeing to the amendment, which, on the question being taken, was lost—ayes 20.

Mr. HUGER moved an amendment, authorizing the Postmaster General to allow hereafter one-third more for the conveyance of the mail in close carriages, than is now allowed for the conveyance in chairs, or on horses.

Mr. SHEPARD spoke for, and Mr. HOLLAND against this motion. Lost—ayes 27, noes 34.

THURSDAY, April 22.

Mr. GILES, from the committee appointed on the fifth of February last, to whom were referred the memorials and petitions of sundry citizens of the United States, and resident merchants therein, praying relief in the case of depredations committed on their vessels and cargoes, while in pursuit of lawful commerce, by the cruisers of the French Republic, during the late European war, made a report thereon; which was read, and ordered to lie on the table.

JUDICIARY SYSTEM.

The House took up the amendment, reported yesterday, to the Judiciary bill, which recommended the striking out the sixth section, and substituting a section prescribing that wherever the two judges of the circuit court are divided in opinion, a certificate of the case shall be sent up to the Supreme Court, who shall decide, subject to certain qualifications.

Mr. GRISWOLD moved to divide the question, and to take the vote in the first instance on striking out the section. The striking out carried.

Mr. HENDERSON opposed the amendment on the ground of the delay to which it would give rise. Every question of evidence on which there shall be a division will arrest the proceedings of the court. Are gentlemen willing to give to the people of America a bill, purporting to amend the old system, which will in reality be a snare to

APRIL, 1802.

Judiciary System.

H. OF R.

suitors? As much as I should lament the necessity of one judge deciding, I would prefer that plan to placing the citizen in the situation proposed by this amendment. I believe the system would be the better by giving all circuit duties to one judge, of the Supreme Court, though that too would be, in my opinion highly defective.

Mr. NICHOLSON.—The select committee were unanimous in recommending to the House this amendment. It occurred to them that some inconveniences would arise from it; but no substitute offered itself to their minds, from which greater difficulties would not flow. From their knowledge of the administration of justice, they believed that very little inconvenience would arise. In the course of the last eight years, but one instance was recollected, though the circuit courts were often held by two justices, in which there was a division, which rendered it necessary to carry a cause to the Supreme Court. I have now to regret that the gentlemen from Connecticut and North Carolina, (Messrs. GRISWOLD and HENDERSON,) instead of illuminating our minds, should employ their understandings in opposing the report. I have heard no substitute proposed, excepting the decision by a single judge, which I should not myself consider as an amendment of the amendment, as I have ever understood that in a multitude of counsellors there is wisdom.

The gentleman supposes the amendment will arrest the proceedings of the court in every case of disputed evidence. I am of a different opinion. In the case alluded to, the witness will be allowed to give his evidence, if the court is divided, and the circumstance of a division of the judges will be sent up in the nature of a bill of exceptions to the Supreme Court, who must decide on it. This will not arrest progress in the trial below. In a question of such intricacy, as shall divide the court, will it be a denial of justice to delay the final decision till the Supreme Court shall settle it? Not to do this, might be unjust and iniquitous; and to vest a final decision in the justice of the Supreme Court would be to declare the district judge a mere cypher, and unworthy of confidence. Where is the benefit of a Court of Appeals if an appeal be not allowed in cases of such importance? Inconveniences certainly will happen, but they result from the nature of law, which you cannot make to suit every man's case. You must, therefore, submit to them.

Mr. GRISWOLD.—No case can be brought to the Supreme Court by writ of error under \$2,000; nor any to the circuit from the district courts less than \$500. Under this provision, sums under \$500 may be sent to the Supreme Court; whereby suitors in remote quarters will incur expenses beyond the sum litigated. This will be a mere mockery of justice, and will drive every suitor from your courts. If that be the object of gentlemen, no better mode of accomplishing it can be devised, for no prudent man will run the hazard of going half a dozen times to the seat of Government. I believe with the gentleman from Maryland in the idea that courts are not often divided. I know that they are not often divided on a final question;

but there is scarcely a litigated case in which the courts do not concur on collateral points.

As to the admission of a witness, the fact is, if the court differs, there is no admission. This must be the case in States where there is no casting vote. In Connecticut there is a casting vote. The cause, therefore, cannot go on. There will be a delay of ultimate decision until the opinion of the Supreme Court is known.

The gentleman from Maryland says we only find fault with the report without proposing anything amendatory of it. Why, I can propose the re-enactment of the law of the last session just repealed. I believe with him there is safety in a multiplicity of counsellors. He ought to have recollected the motion before he voted for the repeal. Let him, therefore, give force to that law. But I am prepared to propose another plan, that the circuit court consist of one judge. Not that I like this plan, on the contrary, I may almost say I abhor it; but, of the two alternatives, this is the best.

Mr. R. WILLIAMS.—It is not to be expected that gentlemen on the other side will agree to this law. I presume it is not their wish to have any of the responsibility attending it. Nor is it my wish that they should. My colleague has said, he would rather strike out the whole section than agree to this amendment. What would be the effect? By this amendment there may be a decision, though there should be some delay. By striking out the section, there would be no decision at all. Under the old law, if division occurred, the case was decided at the next term by the new judge, there being an interchange of judges. The gentleman might, therefore, on the principle on which he now judges, as well object to the delay occasioned by the postponement. I have, however, no partiality to this amendment. I should have no objection to let all preliminary questions fall, if the court is divided, and to allow an appeal only on the ultimate question. In North Carolina there are but two judges. This has been the practice there, without any inconvenience being experienced.

Mr. HENDERSON.—I believe this bill is composed of such heterogeneous elements that it is impossible for any ingenuity to make anything out of it. But, as it must pass, it is our duty to render it as unexceptionable as possible; and what interest can we have in an imperfect system?

My objection has been attempted to be answered. One of the cases which I put, related to the competency of witnesses. The gentleman from Maryland says, every man is a competent witness until proved not to be so. Now, I ask, if a witness is stated to be interested, and the court is divided, how can the cause go on until a decision is made by the Supreme Court? The gentleman alluded to a bill of exceptions; but that is never offered till the decision of the cause. What exception, moreover, can be taken where there is no decision? Every man, acquainted with legal proceedings, knows such language is unintelligible. In the case of a bond, the whole jot depends upon knowing it; and yet the gentleman says the cause may go on!

I did not say it was better to have no section than this. I said it would be better to retain the section stricken out than this. I hope, therefore, the House will recommit the bill, that we may give the people at least a substance of justice, if nothing else. I fully agree with my friend from Connecticut (Mr. GRISWOLD) that gentlemen by this time see the propriety of keeping the late system, rather than adopt this heterogeneous mongrel system. I do not believe that the ingenuity of man can rear on this basis a tolerable system. I would prefer trusting to a single judge, to the holding out false colors, and promising justice and yet denying it. For, I repeat it, under this plan it will be impossible to try causes, which, if once hung up, will be for life.

The question was then taken on agreeing to the report of the select committee, and carried—ayes 39, noes 27.

Mr. LEIB moved to add to the bill the following new section:

"That, from and after the passing of this act, no special juries shall be returned by the clerks of any of the said circuit courts; but that, in all cases, in which it was the duty of the said clerks to return special juries before the passing of this act, it shall be the duty of the marshal for the district where such circuit court may be held, to return special juries in the same manner and form, as, by the laws of the respective States, the said clerks were required to return the same."

Mr. DENNIS said, he understood the object of the gentleman was, to prevent the packing of juries. He wished to know whether this effect was likely to follow from transferring the duty from an officer who holds his appointment during good behaviour, and who, he believed, was dependent upon no one, to an officer who was the mere creature of Executive power?

Mr. LEIB.—My object is to prevent the packing of juries, which has heretofore been exercised by the clerks. I hold an opinion contrary to that of the gentleman from Maryland. I consider the marshal as a responsible officer, amenable to the President; whereas the clerk is the mere creature of, and dependant on, the court. I, therefore, think a more impartial selection of juries will be obtained by confiding this duty to the marshal than the court.

Mr. MILLEDGE was opposed to the motion.

Mr. GILES hoped the amendment would obtain, the effect of which was simply to transfer to the marshal the duty of selecting special jurors, in those States where this is not already the case. It is easy to see that, if the judges should possess a bias towards particular individuals, no mode could be readier to give efficacy to that bias than by declaring the cause should be tried by a special jury, and make their clerk designate them. He would ask, if, under these circumstances, the clerk would not be most likely, of all other individuals, to summon a jury favorable to the views of the court. We have been informed that there have been inconveniences of this kind experienced, in cases where there have been biasses of courts to particular descriptions of citizens. Mr. G. said, he had no doubt of the existence of such impressions.

The first time he heard of this right, possessed by the clerks, he thought it the most extraordinary he had ever heard of. He believed the amendment offered would remedy the present evil, existing in some of the States, without any inconvenience to any other State.

Mr. DAVIS.—The power of selection must reside somewhere. The officer called upon to perform this duty ought to have some knowledge of men. The sphere of acquaintance enjoyed by the clerk, from the nature of his ordinary duties, is limited, whereas the marshal necessarily becomes acquainted with all the prominent characters in his district. For this reason, I think, the duty will be best confided to the marshal.

Mr. DENNIS.—The reasoning of the gentlemen from Virginia and Pennsylvania is founded in mistake. They have taken that for granted which remains to be proved. If the clerks were the creatures of the courts, and removable at their pleasure, there would be some force in their remarks. But that remains to be proved. The courts have the power of appointing, but not of removing; for I take it for granted that the officers appointed by the courts are only removable for misconduct.

It appears to me, since we have heard so much about Executive patronage, that no possible case can be conceived of, where there can be greater danger than in giving the right of selecting jurors to the marshals, who are the mere creatures of the President. We are told, there is no danger from this source, except in cases of a political complexion. But there is no medium through which political prejudices will operate more effectually than through the marshals.

Mr. BAYARD said, he did not feel a strong spirit of hostility to the amendment, because, as it was expressed, he deemed it an extremely harmless thing, which tended only to expose the House to ridicule. It provided for jurors being returned by marshals in cases where the clerks of the court had heretofore returned them. Now, sir, no such cases exist; clerks never do nor never did return jurors.

Mr. B. was, however, opposed to the principle, which, he supposed, it was intended to carry into execution. The object of the amendment, it would be perceived, was to prevent special juries. He deemed it very important to retain the power of summoning special juries in certain cases. In questions of great importance, which often arise in courts, and which involve great principles of law as well as intricate questions of fact, special juries are important. However competent ordinary juries may be to decide causes generally, yet when great commercial questions are involved in such decision, it must be very proper to have the power of summoning a jury of merchants to decide. The same remark is applicable to other professions and business in life. Men whose time has been devoted to particular pursuits, ought to be called on to decide in questions which regard their particular business. Clerks of the courts he considered as the proper persons to select such jurors. They are responsible officers, appointed by

APRIL, 1802.

Judiciary System.

H. OF R.

the court, dependant on their good behaviour; and who is most competent to decide what is the nature of a cause, the court or the marshal? Marshals are the mere creatures of the Executive, proceeding from the nostrils of your President. Their political existence can be extinguished in a moment.

I am at no loss to see the object of this motion. Notwithstanding the declarations of gentlemen against Executive influence, we have for one year past seen a succession of acts tending to the principle from which they had been before diverging. They are now for making the selection of juries dependent upon a marshal, who is dependant upon the President, as they find that power not in the hands of men so dependant upon them as a marshal. And, from this perishable motive, they are for establishing a precedent so dangerous to the administration of justice.

Mr. GILES.—I did not intend to have risen in this debate, as my indisposition is such as almost to make silence necessary. But the charge of fostering Executive patronage has been so often made that I will trouble the House with a few ideas; and I beg gentlemen to review the measures of the session, and say whether those measures are in the least at variance with the professions under which those now in power came into place, and whether those who have heretofore been the strenuous friends of Executive patronage, have not tried to divest the President of every power constitutionally delegated to him? What has been done this session? The internal revenues have been abolished. I beg gentlemen to look at the volume laid before us, and to see how many offices have been taken from Executive patronage. I have not counted the number, but I observe them in large columns. These have been destroyed at a single blow. Those heretofore, when out of power, against Executive patronage, say to the President, we repeat to you now what we heretofore have told you, and we have therefore taken from you the appointment of more than four hundred officers.

I ask, how many new offices have been created, or transferred to the President? I know of none, unless the Commissioners of Bankruptcy, who, according to this act, are to be appointed in the first instance by the President.

Four or five hundred old officers have been dismissed, no new ones have been created; and yet we are told that we are in favor of swelling Executive patronage. Again, I find several foreign Ministers dismissed, and still we are told that we are favorites of Executive patronage. I deny the point; I deny that we have ever voted for an office that was not necessary. I say, on the other hand, that the number of officers we found in existence has been much lessened, and may be lessened still more.

I must observe, that the gentleman from Delaware has come nearer the true point than the gentleman from Maryland, (Mr. DENNIS,) who said, if the clerks are the creatures of the court, there would be some force in objecting to their having the selection of jurors. The gentleman from

Delaware says, the court itself has this right. But how long have we heard this doctrine? For my part, when I heard the gentleman make the declaration, that the courts had this power, I thought it most singular. But grant that the courts have this power, what does it amount to? If chosen by the courts, will jurors be independent? In the existence of political divisions, are courts impartial? I say, that it is within my own knowledge, that jurors have been selected with a view to particular ends.

It is true that they are not now so selected. No, sir; for, if the marshal is on one side, the court is on the other, and is a check on his partiality? The court has the power of directing the jury; and, if they see fit, of granting a new trial. And, permit me to say, nothing can be so dangerous as to unite the power of selecting jurors, and of deciding the cause.

We are told there may be commercial cases which require a select jury. In such cases, why may not the marshal make the selection?

But suppose a political case should occur. This is the most likely, when it does occur, to be productive of mischief; and, I believe, if we have had mechanical and commercial, we have also political juries.

The gentleman from Delaware (Mr. BAYARD) says, he is not at a loss to understand this question. No doubt, he is not at a loss. He understands all questions. And I wish that that gentleman, as well as every other gentleman, should understand it. I say it is improper that judges should empanel the jury. If there are such marked political divisions, as I fear there are, it is most dangerous to unite the power of empanelling, with that of deciding. If you do this, you give the principle, so long contended for, not that of the independence, but the supremacy of the judges. For, during the whole of this session, gentlemen have been using improper names. No man values more highly than I do the independence of the judges; but the question is a question of supremacy; they are to be made supreme! They are to control all your laws! You have given them a great variety of powers, and now they are to have the power of empanelling juries.

I beg leave to observe that this amendment will not have the smallest operation on Virginia, where the marshal summons all juries; but if there be a part of the United States where this evil exists, it ought to be remedied. Not that I am in favor of any bias whatever in the designation of jurors. I wish there was none; I am sorry that our judges are politicians; and so long as the courts are political, it seems to me necessary, in order to meet them, that there should be political juries. The courts can almost do anything; they decide the evidence received, they charge the jury, and may grant new trials. It is, therefore, improper that the clerk should empanel the jury.

The gentleman from Delaware says, there may be a change of men hereafter. That, to me, is altogether immaterial, as I am for acting on general principles, which shall equally apply to all men.

Mr. BAYARD said, he should have no objection to vote for the amendment, if he did not consider it, not only harmless, but absurd. He did not see how political questions had anything to do with struck juries. Such questions arise only on criminal prosecutions; and in those, struck juries are never used; they are summoned in civil actions only. But he considered the amendment as a mere *bagatelle*, it was only a grasp at all power to be placed in the hands of the Executive. As to Executive patronage, the repeal of the internal taxes proved that those who voted for the repeal were for reducing Executive patronage; it proves, also, that those who voted against it were not unwilling to give to the Executive a legitimate exercise of patronage where it was necessary for the public good. But he had seen instances, in cases not calculated to alarm the public mind, where a strong disposition had been shown to extend Executive patronage.

The question was then taken on Mr. LEIB'S motion, and carried—ayes 41, noes 32.

Mr. DENNIS moved to strike out the fifteenth section, which is in the following words:

"And be it further enacted, That there shall be appointed by the President of the United States, from time to time, as many general Commissioners of Bankruptcy in each district of the United States, as he may deem necessary; and upon petition to the judge of a district court, for a commission of bankruptcy, he shall proceed in, and by an act, entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' and appoint, not exceeding three of the said general Commissioners of the particular bankrupt petitioned against; and the said Commissioners, together with the clerk, shall each be allowed, as a full compensation for their services, when sitting and acting under their commissions, at the rate of six dollars per day, for every day which they may be employed in the same business, to be apportioned among the several causes on which they may act on the same day, and to be paid out of the respective bankrupts' estates: *Provided,* That the Commissioners, who may have been, or may be, appointed in any district, before notice shall be given of the appointment of Commissioners for such district, by the President, in pursuance of this act; and who shall not then have contemplated their business, shall be authorized to proceed and finish the same, upon the terms of their original appointment."

Mr. DENNIS called for the yeas and nays. This section says nothing less than that the courts are not to be trusted; and if this power be vested in the President, I can see no reason why the appointment of Commissioners on a petition in chancery may not also be vested in him. Gentlemen have said much about abridging Executive patronage. Permit me to say that this section vests in the President the power of appointing every man, woman, and child in the United States, a Commissioner of bankruptcy. But my great objection, is the inconvenience that will attend this mode of appointment. The President must either appoint a vast number of Commissioners, or the inconvenience will be very great. In my opinion, it is improper to appoint general Commissioners; they ought to be appointed in each special case.

Mr. S. SMITH.—The House well know that I have always been an advocate for the bankrupt system; I am still an advocate of it; I am a friend to it; and it is because I am a friend to it, that I shall vote against striking out this section. I believe the mode pointed out in this section will be most agreeable to merchants, who are most interested in it. It will be recollected that, at present, the Commissioners are appointed by the district judge, to whom appeals are to be had, when the Commissioners shall be considered as acting wrong. The Commissioners, therefore, will be extremely cautious how they offend the district judge, and be apt to be too much biased by him. At present, the commission is not general, but formed for every special case. With respect to the Commissioners of Maryland, I have never heard any complaints. They are men of respectability. But I wish this commission to be perfectly independent. This new course will make them more independent. The President will first name the Commissioners, from whom the judge will have an opportunity of selecting fit characters for each case; and I am convinced that this will be the most satisfactory. As to Executive patronage, I can say, with the gentleman from Delaware, I can see no patronage created in this measure. With regard to appointments, they are constitutionally vested in the President, who will, in general, discharge the duty well, though he may be sometimes mistaken.

Mr. GILES said, though in favor of the section, he was not very tenacious of it; but he believed the appointment to office ought to be where the Constitution had placed it, in the hands of the President. The judges have proper subjects on which to exercise their powers; and a preclusion from all other unnecessary objects will best insure their independence. These officers are considered as important and responsible. He did not see any part of the Constitution that gave the judge the power of appointing them.

Mr. GILES said, his indifference to this subject arose from another reason. He believed the bankrupt law the worst act that Congress had ever passed. He was, however, perfectly willing that experience should test it. He had, since its passage, heard of no new proselytes to it, while he had heard of many complaints against it. He believed that, at the next session, the force of public opinion would repeal it; and that this effect would be principally produced by the very persons for whose benefit it was formed.

Mr. BAYARD said, he had not the smallest doubt of the sincerity of the gentleman from Virginia, when he tells us the courts of law are the worst possible depositories of appointments. Nor was he at any loss to know to what to ascribe this opinion. He says the President is the natural officer to make appointments. He had no doubt that gentleman now thinks so, as well as other gentlemen, who, until lately, thought very differently.

Mr. B. said, he could convince the gentleman there was no repugnance to the Constitution in vesting this power in the judges. He then read the 2d section of article 2d of the Constitution:

APRIL, 1802.

Judiciary System.

H. OF R.

"Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, *in the courts of law*, or in the heads of departments."

After hearing this section of the Constitution, the gentleman will not say it is more natural to give this power to the President than to the judges. It is a paltry affair. The power to appoint in these cases cannot create a patronage very useful to the President. From all experience, under a system of bankrupt laws, the power now to be given to the President, ought to belong to the judges. In England, the King cannot appoint a Commissioner. The power is appurtenant to the court; and the experience of this country has shown no inconvenience from the power vested in the Chancellor. But why, sir, on a bill professing to amend the Judiciary system, are we led into a discussion of the bankrupt act? Why are we told the law is to be repealed? And why is this section, not relating to the subject of the bill, introduced into it? It is the expectation of taking a miserable power from the courts to vest in your President. Has there been any complaints, remonstrances, or petitions, against abuses of the power in the judges? I have heard of none. Why, then, transfer the power from a department possessing no power, to one already possessing exorbitant powers? Gentlemen will find themselves infinitely mistaken in giving this power to the President; it will not extend his influence so far as his disappointment. When gentlemen recollect seriously the duties of the Commissioners, they must be convinced of the difficulty of the President's filling these appointments. The ordinary characters, fit to fill these offices, and willing to fill them, are infinitely below the knowledge of the President. He must rely on the advice of others. By what light will he be instructed as to the number necessary? In Delaware, there has not been occasion for a single Commissioner of Bankruptcy; in Pennsylvania, only in Philadelphia; but they may be wanted in the other parts of the State; and the nomination must be dispersed over the country. If you are jealous of the judges, how do you operate on them? You take not their power; for, after all, the President does not make them Commissioners, but only qualifies them to serve when selected by the judge; the men thus preferred to the others, are so far obliged by the preference; and if the influence of the judge is feared, here is still a field to exercise it. Your Presidents may fall on men the first victims of the law. The intimate connexion of merchants is so intricate, that no previous appointment can be made, without the hazard of making men judges in their own cause. Upon the whole, I perceive much injury which may result from this innovation, without any benefit. The compensation, by the present section, of twenty-four dollars per day, for three Commissioners and clerk, will eat up every fragment of the bankrupt's estate, for whom nothing will escape, but a miserable remnant.

Mr. BACON.—I am apprehensive that the determining who are to perform these duties does not

depend on a long chain of reasoning. It appears to me that there is a strong impropriety in vesting the same men with the power of appointing and ascertaining the compensation of the person appointed. This is nearly the same as fixing his own compensation; for he has only to appoint his own friend, and then determine his compensation. This is too great a temptation for human nature; and, with me, weighs more than the long train of logical reasoning which we have just heard. I am, therefore, against striking out the section.

Mr. GODDARD said that, if he was fully satisfied that the gentleman from Virginia (Mr. GILES) was correct in his opinion of the bankrupt law, and he was not perfectly satisfied that he might not be correct, he should not feel such strong objections to the provisions of the section. But, being willing to give the system a fair experiment, he could not consent to adopt the section; because he believed it calculated to render the law much more inconvenient to the citizens, and to render it odious. The President, by this section, is authorized to appoint, in each State, as many Commissioners of Bankruptcy as he might think proper. This provision might not be productive of any considerable inconveniences to the few large cities; and if bankruptcies could be confined to these cities, he should feel indifferent about this provision. But, in the State which he had the honor to represent, there were no very large trading towns, but many smaller ones, and persons who might be liable to bankruptcy were scattered over all parts of the State. The consequence of this provision would be, that the President must either appoint a host of Commissioners in all parts of the State, or rather capacitate a vast number of persons by commission, under him, to be appointed Commissioners by the judges; or the citizens from the extreme parts of the State, in case no greater number than was originally contemplated, (not less than three nor more than twelve,) must travel to one central spot to have this business done, in case of bankruptcies; either of which would be very inconvenient and oppressive. Besides, those named Commissioners by the President, in the State of Connecticut, will be incapacitated, under the laws of that State, from being members of the State Legislature.

Mr. ELMENDORF.—From representations made to me, I confess I am extremely tenacious of this section. It has been shown, by the gentleman from Delaware, that there are but three modes of appointment; first, by the President; second, by the courts; third, by the heads of departments. When these offices are created, they become the subjects of Legislative discretion. The practice has been, not as stated by gentlemen for the court to appoint for each particular case, but to appoint a general board. From this practice, inconveniences have arisen too intolerable to be borne. Improper persons have been appointed, and enormous emoluments allowed; and the whole fragments of the bankrupt's estate have been destroyed. The provisions of the law have been so tortured, that the Commissioners have received, under the sanction of the court, six dollars a day for every

case of bankruptcy before them. It will be found that the son of a judge has even been appointed. Shall we, then continue this power in the hands of the courts? No; we have tried them abundantly. We ought not, therefore, to shrink from imposing this duty upon the President, which the good of the country requires to be vested in him. I am not a friend to the bankrupt act, not because I am inimical to a proper system of bankruptcy, but because the evils, under the present system, exceed the benefit which it confers. Under this system, from the practice in New York, it would seem that it was not so much for the benefit of the real bankrupt, as for those who can afford to pay well, or can give security for those who wish to become bankrupts.

I will ask, if the provision of this bill will not be a check on the present abuses, by limiting the total daily compensation to six dollars. I would rather limit the allowance to four dollars a day; but I believe ten times six much greater than six. I believe that appointments in the State of New York are considered as more beneficial than any that can be conferred; and, if they are so emolumentary, I fully agree with the gentleman from Virginia, that they ought not to be made the instruments of court patronage. Not that I am for giving improper appointments to the President; on the contrary, I wish less power of this kind had been reposed in him; but, in this respect, I am constrained to obey the Constitution.

Mr. MORRIS spoke against the section. When the question was taken by yeas and nays, on striking out the 15th section, and lost. Yeas 35, nays 36, as follows:

YEAS—John Archer, James A. Bayard, Walter Bowie, John Campbell, John Condit, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Joseph H. Nicholson, Thomas Plater, Nathan Read, William Shepard, John Smilie, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John CLOPTON, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Anthony New, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, and Isaac Van Horne.

Mr. BAYARD moved to amend the sixth section by adding to the eleventh line, the words, "and which at the end of the said session shall remain undetermined," and called for the yeas and nays; which were taken, without debate—yeas 32, nays 39, as follows:

YEAS—Willis Alston, James A. Bayard, John

Campbell, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Matthew Clay, John CLOPTON, John Condit, John Dawson, Lucas Elmendorf, John Fowler, William B. Giles, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, and Isaac Van Horne.

Mr. BAYARD offered a new section, to this effect: "That this act shall not go into operation, or take effect, until the first day of July next;" and required the yeas and nays.

Mr. BAYARD.—The system lately repealed will not go out of operation until the first of July; otherwise there will be contrarious systems in force at the same time. It is difficult to say what would be the effect of a collision of the two systems. I would wish gentlemen to say, whether the present circuit courts are, or are not, to have a Spring session. This bill creates new circuit courts, to take effect immediately. I am not prepared to say whether the old circuit courts will remain in force after the passing of this act. I am very much inclined to think that the effect of this law may be, to suspend the circuit courts now sitting, and the effect may be to annihilate judgments now given. I would, therefore, wish gentlemen to be explicit.

Mr. NICHOLSON.—The objection, taken by the gentleman, is fully provided against by the fourth section; wherein it is declared, that none of the circuit courts, created by this bill, shall be held until after the first day of July next. There can, therefore, be no kind of contradiction between this and the repealing law. But I believe the effect of the amendment will be, to give the Supreme Court a June session, which is not intended by the bill.

Mr. BAYARD.—The gentleman from Maryland has not answered my objection. His design is, that the present circuit courts shall hold a Spring session. But this will not be the effect of the bill. The basis of the power of the old judges is derived from the old division of the United States into circuits; now, if this basis is changed by a new division, how can the same judges be circuit judges? The effect will be, to have two circuit courts. As legislators, ought we to suffer any doubt to remain on a subject, when we can remove it by a single section? Is it not a matter of serious consideration to the judges and suitors, whether the judgments rendered in these courts are nullities? And what objection is there to

APRIL, 1802.

Judiciary System.

H. OF R.

the section now offered? Why, that it gives a session to the Supreme Court in June. But is this a source of alarm? Are the justices of the Supreme Court objects of terror to gentlemen? Was not this session contemplated and expected? The effect of the present bill will be, to have no court for fourteen months. Is this Constitutional? Are the judges to consume their salaries without having anything to do? I call upon gentlemen to consider the alarming principle contained in this bill. They are about to pronounce that the Supreme Court, a court formed under the Constitution, shall not sit for fourteen months, instead of sitting in six months. Are gentlemen afraid of the judges? Are they afraid that they will pronounce the repealing law void? If gentlemen think they have no such power, they will conclude that any interposition of the judges will be rejected by the good sense of the people; and if they have such a power, are they prepared, on a mere political pretence, to deprive them of it? Sir, as far as regards myself, I have not the smallest knowledge that any such interposition will take place. It is not probable that, at present, any one judge knows the opinion of another. My own opinion is, that it is scarcely probable they will interpose. I do not see how that question can come before them. It is ten to one that they will not act upon it.

Mr. NICHOLSON.—I have no hesitation to declare, that I am not afraid of the exercise of any Constitutional authority of the judges. Such authority can be exercised as well in February as in June. They will have the same opportunity of acting in February as in June. As far as regards myself, I care not whether they pronounce the repealing law unconstitutional or not, though I should regret such an act, as I wish harmony to prevail between all the departments of the Government. My being, therefore, in favor of postponing the session until February, does not arise from any design which I entertain, to prevent the exercise of power by the judges. But we have as good a right to suppose gentlemen on the other side are as anxious for a session in June, that this power may be exercised, as they have to suppose we wish to avoid it, to prevent the exercise.

As to the proposition of one annual session, instead of two, that has been already discussed and decided upon. But, if gentlemen merely wish to save the present circuit courts until the first of July, though I think that is already provided for by the bill, I shall have no objection to an amendment to that effect.

Mr. GRISWOLD.—The fourth section either puts down the present circuit courts, or it establishes two sets of circuit courts. It is, therefore, reasonable and proper to agree to the amendment, that this effect may be prevented. And I cannot believe that this House is afraid of having a session of the Supreme Court in June. I know that it has been said, out of doors, that this is the great object of the bill. I know there have been slanders of this kind; but they are too disgraceful to ascribe to this body. The slander cannot, ought not to be admitted. I, therefore, hope that gen-

tlemen will agree to have a session in June next. For my part, I have strong reasons for wishing a session in June. I believe the repealing act is a usurpation of power by the Legislature; and, whenever I see a usurpation, I think the speedier it is checked the better. I have, therefore, no hesitation to say, I wish an early sitting of the Supreme Court. To their judgments I submit, and I trust every member in the community will also submit.

Mr. BACON.—I apprehend the gentleman need not labor very hard to dispel the fears entertained of a sitting of the Supreme Court. I apprehend there is no cause of fear. Nor do I see the necessity of the amendment, to save the Constitution; because, if the repealing act be unconstitutional, it is no law, and not in the way of their meeting. If it is so considered by the judges, they will meet together, of course. I, therefore, think that even the gentleman from Connecticut can have no very alarming apprehensions on this score.

The question was then taken by yeas and nays, on Mr. BAYARD's motion, and lost—yeas 27, nays 46, as follows:

YEAS—Willis Alston, James A. Bayard, John Campbell, Manasseh Cutler, John Davenport, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Platter, Nathan Read, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmen-dorf, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Isaac Van Horne.

The bill was ordered to be read a third time to-morrow.

ADJOURNMENT.

Mr. BAYARD moved that the House do come to the following resolution:

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session of Congress, by adjourning their respective Houses on Monday, the twenty-sixth instant.

The taking up the motion was supported by Messrs. BAYARD and S. SMITH, and opposed by Mr. ELMENDORF.

Mr. D. HEISTER moved the previous question.

Mr. NICHOLSON moved an adjournment.

Mr. BAYARD called for the yeas and nays on

the question of adjournment; which were taken, and the adjournment lost—yeas 29, nays 41, as follows:

YEAS—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Richard Brent, John Campbell, Thomas Claiborne, John Clopton, Richard Cutts, John Davenport, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Helms, James Holland, David Holmes, Michael Leib, Anthony New, Joseph H. Nicholson, Israel Smith, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, Philip R. Thompson, and Philip Van Cortlandt.

NAYS—John Archer, James A. Bayard, Robert Brown, William Butler, Matthew Clay, John Condit, Manasseh Cutler, Samuel W. Dana, John Dawson, John Dennis, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Archibald Henderson, Benjamin Huger, Thomas Lowndes, John Milledge, Samuel L. Mitchell, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, John Smilie, Samuel Smith, Samuel Tenney, John Taliaferro, jr., Benjamin Tallmadge, David Thomas, Abram Trigg, John Trigg, George B. Upham, Isaac Van Horne, and Lemuel Williams.

The House then proceeded to consider the motion of Mr. BAYARD, for authorizing an adjournment of the two Houses on the twenty-sixth instant.

Mr. GILES moved to postpone the consideration of the motion till Monday next.

Mr. S. SMITH hoped the motion of Mr. BAYARD would be agreed to.

Mr. BAYARD called for the yeas and nays on Mr. GILES's motion.

Mr. GILES said he would much rather withdraw his motion, than consume the time taken in calling the yeas and nays.

Mr. BAYARD then called for the yeas and nays on his own motion; which was carried—yeas 53, nays 13, as follows:

YEAS—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Dennis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, William B. Giles, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Seth Hastings, Daniel Heister, William Helms, Archibald Henderson, James Holland, Benjamin Huger, Michael Leib, Thomas Lowndes, John Milledge, Lewis R. Morris, Thos. Morris, Anthony New, Joseph H. Nicholson, Thomas Plater, Nathan Read, John Smilie, Samuel Smith, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, David Thomas, Philip R. Thompson, John Trigg, George B. Upham, Isaac Van Horne, and Lemuel Williams.

NAYS—John Archer, Walter Bowie, Thomas T. Davis, John Dawson, William Dickson, John Fowler, David Holmes, Israel Smith, John Smith, of New York, John Smith, of Virginia, John Taliaferro, jr., Abram Trigg and Philip Van Cortlandt.

And then the House adjourned until to-morrow.

FRIDAY, April 23.

The House resolved itself into a Committee of the whole House on the bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two; and after some time spent therein, the Committee rose, and reported several amendments thereto.

Ordered, That the said bill, with the amendments, do lie on the table.

Mr. GRISWOLD made the following motion:

Resolved That the committee to whom was referred the Message of the President of the United States, respecting the French corvette *Berceau*, be instructed to inquire whether any further appropriations are necessary to cover the expense which has arisen for the purchase and repairing that vessel for the French Government, and for advancing to her officers their monthly pay.

Mr. S. SMITH moved to amend the motion by striking out the words "for repairing for French Government."

Mr. GRISWOLD opposed the amendment.

Mr. GILES hoped the gentleman from Maryland would withdraw his amendment, and that the motion would be agreed to.

Mr. S. SMITH withdrew his motion, in order to save time.

The motion was then agreed to without a division.

JUDICIAL SYSTEM.

The bill to amend the Judicial System of the United States was read a third time.

When Mr. R. WILLIAMS moved to recommit the bill, for the purpose of striking out the 15th section, which gives the nomination of Commissioners of Bankruptcy to the President.

Question on recommitment carried—yeas 37, nays 33.

The House went immediately into Committee of the Whole, Mr. S. SMITH in the Chair, on this section.

Mr. R. WILLIAMS moved to strike it out.

Mr. BAYARD.—I am decidedly opposed to the passage of the law. Its defects are as numerous as its provisions; and it introduces not a single improvement into the system it is designed to amend. I mean not to trouble the House with an extended or detailed view of the subject. Considering the value of our time, from the small portion which remains before the session will terminate, by the resolution we have passed, I shall content myself with pointing out some objections to the bill; which, according to the opinion I entertain, furnish sufficient ground to induce gentlemen to refuse to it their assent.

The ninth section, which happens at present to be under my eye, contains a provision, not simply absurd, but extremely mischievous. I should have moved to recommit the section, could I have flattered myself with the most distant prospect that any motion I made, supported by any reason which could be advanced upon this subject, would have been adopted by a majority of the House.

But, sir, having failed in many amendments,

APRIL, 1802.

Judiciary System.

H. or R.

recommended by a very plain strong sense, I was unwilling to waste time in a vain effort, which would have been resisted, without the trouble of attending to its object.

The section to which I refer, provides, that all causes and process, either of a civil or criminal nature, which shall be depending or returnable in any of the circuit or district courts of the United States, on the first of July next, shall be continued, and transferred, and returnable to the circuit and district courts established by this act.

Causes depending in, or process returnable to, any district court in the United States, are transferred to the circuit and district courts established by the act. By the act there is a circuit court instituted in each district, but no new district court is established, except in the district of North Carolina and Tennessee.

One of two things must, therefore, follow; either, that all causes in the district courts of the other districts must be transferred to the district courts of North Carolina and Tennessee, or be carried into the circuit courts, which the act establishes in the several districts. However absurd this operation may be, yet, as the power of the Legislature to produce it cannot be denied, the express and unequivocal words of the law must take effect.

It is not the design, I presume, to abolish the district courts; and though they are suffered to exist, they are capriciously stripped of all their business which cumulated upon the circuit court. I ask, if gentlemen can give a different construction to this section, if they can deny the operation I attribute to it, and if there be a single member who will undertake its defence?

In looking, Mr. Speaker, through the bill before us, I discover but one defect of the ancient system which it attempts to correct. That is the rotary constitution of the court, in relation to the judges who composed it. The act confines particular judges of the Supreme Court, to several circuits which it creates. This provision designs that the circuit courts shall always be composed of the same judges. This might have been considered as a useful improvement, if pains had not been afterwards taken to render it abortive. The law has not named, though it has contrived to designate, personally, the judges of the Supreme Court, at present assigned to hold the courts in the several circuits. But, as successive vacancies happen on the bench of the Supreme Court, the judges are, by allotment, to be assigned anew to their different circuits.

This provision reproduces the very evil, and the only one which the bill professes to correct in the old system.

As there are six judges, and, generally, advanced in life, vacancies from death or resignation must occur in very short periods. Upon each vacancy, every judge ceases to be attached to a particular circuit, and must wait for a new allotment to know the circuit to which he is to belong. The judges had formerly the power of assigning themselves to particular circuits, and the only change which is introduced, is, that an assignment of the judges once made, it cannot be varied until a va-

cancy on the bench occurs. This, however, must happen so frequently as to expose the circuit court to the same oscillations, in the administration of justice, as were experienced and complained of under the old system.

I would beg, also, that gentlemen would give us some information upon a point of great importance, and of great doubt, which arises out of the arrangements upon this subject. After a vacancy occurs upon the bench of the Supreme Court, what is the situation of the circuit courts, before a new allotment is made by the judges of the Supreme Court?

Upon every new appointment, the allotment is to be made; and, until it is made, the power of the judges, in their ancient circuits, would seem to be suspended. The allotment can only be made at a session of the Supreme Court; and, as the court has but one annual session in the month of February, if a vacancy should happen, and an appointment be made in the month of March or of April, the circuit courts would be suspended for more than a year, and the whole business of the courts destroyed by discontinuance. Is it possible that gentlemen can give their assent to a bill pregnant with such mischief and injustice? Can they suppose that this thin veil, this gauzy covering, will conceal from the eyes of the world the latent design of destroying the Judiciary power of the United States, by rendering it incapable of attaining justice, and productive only of vexation and expense?

The fourth section of the bill contains a provision which certainly transcends the power of Congress, great as it has appeared during the existing session. It enacts, that the court, in the fifth circuit, shall be holden by the present Chief Justice and the judge of the district in which the court shall be holden. The law has no limitation, and is designed as a permanent system. It supposes, therefore, that the present Chief Justice associated with the district judge, is *for ever* to compose the circuit court of the fifth circuit. This, sir, might have been an oversight in draughting the bill, but what will it be when, with our eyes open, we adopt it in the law. Will the public be satisfied with laughing at the absurdity, without suspecting the integrity of the motive which induced the House to assent to it?

I will not fatigue you, Mr. Speaker, with the useless labor of attending to a critical examination of the incongruities and absurdities which abound in the bill; but I call, and I have a right to call upon the friends of it to come forward, and point out a single particular in which it corrects a defect in the old system.

Do gentlemen suppose that the people of this country have no understanding? Do they imagine that they will always remain the dupes of empty words, that they will look no farther than the title of a law, and continue to repose an implicit faith, after finding themselves repeatedly deceived? You call this a "bill to amend the Judicial system of the United States;" but amendment is not the effect, and nothing is more remote from the design of it.

Having enumerated the defects of the ancient system upon a former occasion, I will not now repeat them; but I affirm, and if I am wrong, the advocates of the bill will expose the error, that not one of those defects is removed by the present law.

There is one view of this subject which requires that information should be given, not to the House simply, but immediately to the nation. Is it the design of gentlemen, by this bill, to destroy the power of the present judges of the circuit courts during the short period of their political existence, allowed by the repealing act which was lately passed? This law is to take immediate effect. It breaks down all the circuits formed by the act of 1801, and throws the districts into new circuits.

The present judges were appointed and commissioned for certain circuits. A judge, commissioned for the first circuit, could exercise no authority in the second. The new arrangement, abolishing the old circuits, how are the judges to determine the boundaries of their power?

I shall be allowed to exemplify my view, by stating the case relative to the State to which I belong. Under the law of 1801, Delaware was a member of the third circuit; by the present bill she is comprehended in the fourth; the question, therefore, is, whether a commission to hold a court in the third circuit, will authorize a judge to hold one in the fourth? Is the point exempt from all doubt? And are we excusable in leaving a doubt upon a point of such consequence and responsibility?

While we are passing this law, the courts are in session; the judges, obedient to the obligations of duty, are exercising the solemn functions of their office; and, while they are occupied as they believe, in administering justice, if we abolish their legitimate authority, we render them, their officers, and suitors, trespassers, and might expose them even to the accusation of murder.

Will not gentlemen avow their intentions on this point, and, by a few plain words, enable the judges distinctly to perceive the path which they are to pursue?

But, sir, when I look to the object of this bill, I become sensible how idle it is for me to ask for anything, however moderate and reasonable it may be. To accomplish that object, every objection will be trodden under foot.

This act is not designed to amend the Judicial system; that is but pretence. If amendment had been in view, gentlemen would have contrived a better plan than the present bill proposes, which I panegyricize, by calling a miserable piece of patchwork. No, sir; the design of this bill, is to prevent the usual session of the Supreme Court in next June.

It is to prevent that court from expressing their opinion upon the validity of the act lately passed, which abolished the offices of the judges of the circuit courts, until the act has gone into full execution, and the excitement of the public mind is abated. I know not that the subject would be brought before the judges, or that they would officially take it up; but it is the fear of their solemn

opinion, and a knowledge of the just reverence which the people of this country entertain for judicial decision, which has given birth to the present expedient. Could a less motive induce gentlemen to agree to suspend the sessions of the Supreme Court for fourteen months? The last session was in December; the judges are forbidden to assemble again, until fourteen months from that time have expired. Could a more dangerous precedent than this be established? May it not lead to the virtual abolition of a court, the existence of which is required by the Constitution? If the functions of the court can be extended by law for fourteen months, what time will arrest us before we arrive at ten or twenty years? This objection to the bill alone would be fatal, in my mind. We have offered an amendment upon this point, enabling the judges of the Supreme Court to meet in June. We have begged gentlemen to accede to this amendment, if for no other reason than to banish the aspirations as to the object of the bill, but though we are told they are indifferent as to the opinion of the Supreme Court upon the validity of their late act, yet we find the bill tenaciously adhered to; and that, with all its imperfections about it, it is to be converted into a law. The majority, sir, must have their will; but I am deceived, if their triumph is of long duration. The people of America can be governed but a short time by empty words and hollow pretences.

The motion was further supported by Messrs. R. WILLIAMS, DAVIS, T. MORRIS, GODDARD, NICHOLSON, and HASTINGS, and opposed by Messrs. ELMENDORF and BACON.

When the motion to strike out was agreed to—yeas 44, nays 25.

The Committee rose, and reported their disagreement to the 15th section.

Report confirmed in the House.

The question was then put on the passage of the bill.

Mr. BAYARD called for the yeas and nays, which were taken, and stood—yeas 46, nays 30, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanael Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

NAYS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Thos. Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Til-

APRIL, 1802.

The Mint.

H. OF R.

linghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

THE MINT.

The House then went into Committee of the Whole, on the bill for repealing the several acts establishing the Mint.

Mr. GILES observed, that when he had laid certain resolutions on the table respecting the subject, it was said the House had not sufficient information on which to act. To obtain this information he had suffered them to lay. The information is now received. He believed that information would satisfy the House of the little utility of the Mint. He believed that from the effects of a peace in Europe, we should have silver enough, and that we really had copper enough to serve for several years. There was another circumstance, which made it necessary for the House to act on the subject this session. After the third of March, the establishment will have to be moved to this place. There was also another reason for acting. The Director states the implemments to be considerably out of order. Rather than incur the expense of these repairs, he thought it best for the United States to disembarass themselves of this expense, and save an annual sum of \$20,000. This would also afford a relief to the revenue after repealing the internal taxes.

The Committee rose, and reported the bill without amendment.

The report of the Committee was immediately taken up.

Mr. S. SMITH.—When this subject was formerly before the House, I said that the gentleman from Virginia was warranted in saying, that the gold coin of the United States was finer than some other in circulation; for the Director of the Mint, in his report for 1800, stated the American gold to be \$27 42 on 1,000 pennyweights, finer than the Spanish doubloon; that the same report stated the expense of the Mint Establishment at \$20,986—the gain on copper for the same year \$5,050—leaving the real cost of the Mint for that year \$15,936—the whole copper coin for 1800 being only \$29,279; from which it will appear that each cent (as was understood) would cost the United States half a dollar; this, however, was on the presumption that little gold or silver would, in future, be offered for coinage. In answer, a gentleman from Connecticut (Mr. DANA) said, that I was mistaken if I meant to say that each cent had cost the United States half a dollar; that if I had said each dollar's worth of cents had cost half a dollar I should have been more correct. In answer I said that every gentleman must have seen from the statement I gave in figures of the quantity coined, and the cost of the Mint Establishment for a year, that I meant to say that each dollar's worth of cents had cost half a dollar, and that if I had said otherwise, it ought to have been considered as a "lapsus linguæ," and not as an attempt to mislead.

I have considered it proper, in justice to myself, to repeat what I had said on a former occa-

sion on the same subject, because the reporter of that debate had been extremely inaccurate, owing perhaps to his not being accustomed to the taking of debates.* It will be remembered that a similar mistake to that made by me had been made the same day by the gentleman from Connecticut, (Mr. GRISWOLD,) from Delaware, (Mr. BAYARD,) and from Virginia, (Mr. GILES.) Indeed, it was not easy to avoid such mistakes in the warmth of debate.

I have now before me the last report of the Director of the Mint, by which I am confirmed in my former opinion, the expense of the establishment has exceeded even my expectations as to the cents. Again I repeat what I formerly said, that the Secretary of the Treasury may be empowered to contract with the bank, or with individuals of the United States, who shall be obliged to stamp the cents within the United States, for the quantity required annually. I observe that the Director imports from England the planchettes, or pieces the size of the cent, and stamps them at the Mint; the same may be done by the banks or individuals without any cost or charge on the Government; and we may put down an establishment that has cost the United States \$30,000 per annum.

Mr. DANA.—The gentleman from Maryland, I presume, has reference to me. I have a tolerable recollection of what passed on that occasion, though not a complete one, and I conceive the statement of the gentleman from Maryland (Mr. S. SMITH) to be perfectly correct. It will be recollected that after the same mistake had been made by my colleague, and other gentlemen, that I rose and said I was perfectly satisfied that when the gentleman from Maryland said that each cent had cost the United States half a dollar, it was a mistake, and made without any intention whatever of misleading the judgment of the House.

As some observations have been made on the coinage of the precious metals as symbols of royalty, and as an idea has been thrown out that the copper coinage ought to be effected in foreign countries, I will refer to the report of the then Secretary of State, to show the ideas which he entertained on the subject. [Mr. D. here quoted this document.] I consider this as a complete answer to the coins being made in a foreign country.

But my great objection is, that the bill destroys the whole establishment; and that it does this in so instantaneous a manner that it is scarcely possible to sell to the least advantage the implemments of the institution; and because the copper coinage is rather a source of profit than loss, as Government may give this description of coins a value far beyond the current price of the metal. I am not tenacious of the whole establishment; but I should wish to see some provision, at least for a copper coinage, made before the whole establishment is broken down. As to the law for fix-

* Allusion is here made to the Washington Federalist.

H. OF R.

The Mint.

APRIL, 1802.

ing the Mint at Philadelphia expiring next session, that can be very easily obviated. To do this it will be only necessary to continue in force the act lately passed for keeping the Mint at Philadelphia.

Mr. GILES said, that all gentlemen united in opinion that this establishment could only be maintained by a heavy charge to the Government. And if we turn to the report of the Director, we shall find that he himself supposes the gold and silver coinage not now necessary. This is the most expensive part of the system. We must, then, if we keep up the institution, expend annually \$20,000, and find that after the expenditure there is very little to be done.

As to the expense of the copper coinage, as stated by the gentleman, it is a mere estimate; whereas the fact is that about \$30,000 a year have been expended for ten years; why continue this expense? To coin bullion, when we have no bullion to coin?

The gentleman from Connecticut has read an extract from the report of the Secretary of State, (the now President,) and he infers an opinion of that character, that coining precious metals is an act of national sovereignty. I suppose not to do it is also an act of sovereignty. The truth is, the sovereignty consists merely in the power to do or not to do it. I suppose gentlemen are for laying out \$30,000 annually, barely to show that such a power exists. I believe there is another act of dignified national sovereignty—the act of passing wholesome laws; national sovereignty in this case does not consist in making the impression of our laws ourselves, but in having the power to direct it to be done. It would be extraordinary if, in this case as the other, we were to lay out \$30,000 to show that we possess this attribute of national sovereignty. As to the expending thousands of dollars, every body knows we do that every day on a liberal scale. That, therefore, is no argument with me.

As to the copper coins, I am told there is no deficiency of them. They are, I believe, of very little consequence where I live, for the people will not take them. But I believe there is a sufficient quantity for the country. But if not, this bill does not preclude the obtaining more. I have no objection to making a contract with the bank to supply us with cents, and I believe it may be done in this way without costing us a dollar. The gentleman from Connecticut states the profit that may be derived from depreciating the coin. This, it is true, has often been tried, but it has generally failed. It certainly could not be far extended; for it would soon be discovered to be a mere cheat.

As far as the institution has heretofore gone, out of \$30,000 annually expended, about \$5,000 has been saved by the copper coin. I believe that profit would induce the bank to undertake the coinage. At present the copper coin is impressed on metal of the same size that is imported here; and the only thing done here is to make the impression. This the bank can do as well as the Government.

Mr. G. said he believed the idea of the gen-

tleman from Maryland (Mr. S. SMITH) correct, that our gold coin was so pure that it had tempted workers in the metal to transmute it, and he believed this effect would continue so long as the present law existed. The effect will be, that the Mint will be refining the precious metals barely for the benefit of workers in those metals. This, he believed, was the reason why we had so little coin made from the precious metals; and the consequence will be that in a short time we shall have very little of them. For these reasons he believed the establishment useless, and that the single question was, whether we would abolish an useless establishment, or keep it up at an annual expense of \$30,000? If, however, it was the wish of the House to retain it, he would acquiesce, though he thought it best to act up to the principles on which they had started.

Mr. DANA disclaimed all thoughts of adulterating the precious metals. His remarks had applied exclusively to the copper coinage.

Mr. EUSTIS said it appeared to him that in this establishment much money was paid for but little service rendered. But as this bill had been suffered to lie for a long time, he had entertained the belief that the gentleman who had introduced it had contemplated the retaining some of the offices, while the expenses were reduced. Mr. E. conceived this would be the best policy, as there were men employed in the institution who could not learn in a day or year what it was necessary for them to know. If such men shall hereafter be wanted, they cannot be easily got. It appeared to him that every establishment is responsible for the coin that bears its own stamp. Now, suppose coin is imported, who is to determine its purity? We must have some responsible officer to examine it. It had always appeared to him very desirable to have a coin between the amount of bank notes and copper coin. Such a result certainly should not cost \$30,000; he supposed it might be reduced to \$10,000. He believed the time would come when we will have a gold and silver coinage—not from a sentiment of national pride, but from its utility. At present bank paper is very useful; but the time may come when it shall be thought proper to substitute coin for it. The idea of importing copper coin had never been agreeable to him. He believed it absolutely necessary to have an assay-master. He would, therefore, rather that the bill should not pass, if not amended; though he wished a reduction of the establishment.

Mr. GRISWOLD.—I do not think the gentleman correct in the view he has taken. I believe the expenses hereafter will be much lower than they have been heretofore, from the cost of the implementations. But gentlemen ought to take into view the benefit to the nation derived from this establishment. If bullion be not coined here, it must be sent to Europe, and all the charges of transportation and insurance will be so much expense to us. If gentlemen will attend to the sum coined last year, they will find that the whole expense of the establishment is saved to the nation. If the coins are too fine they may be reduced; for there

APRIL, 1802.

The Mint.

H. OF R.

is no necessity of having them finer than the coins of England, with whom we have principal intercourse.

With regard to the expenses of coinage, I differ from the gentleman from Maryland, (Mr. S. SMITH,) who supposes every dollar of cents cost half a dollar. On the other hand, I believe there is a profit. I have, indeed, no doubt of it. I believe Government is a gainer from that coinage. I know Government can render itself a gainer, as the value of the cent, when coined, is much greater than before; for, with regard to the base metals, it is proper for Government to impress what value it pleases, as they are confined to our own internal commerce. Of course we may subject the copper coinage to such regulations as not to be productive of expense.

It is well known that the amount of the copper coinage is small. If the establishment is destroyed, it will be lessened, and this will be attended with infinite embarrassment to a certain description of citizens. Is it not then essential, at any rate, to pass this bill with some reservations? The great expense is an objection to the establishment. But let us wait, at least for one year, to find whether this expense will not be greatly reduced by peace; and let us postpone the bill to next session.

Mr. G. concluded by offering a motion to this effect.

Mr. GILES.—I think the House prepared to act at this time. Yet, though I shall vote against the postponement, I shall be perfectly satisfied with it, if acceptable to the House. Nor do I object to a regulation to save the copper coinage. I rather believe this will be the better plan; though I believe this cannot be done this session, as it will require a greater knowledge of the necessary offices for it than we can possess.

I differ with gentlemen as to expense. I wish we could obtain a reimbursement of the expense already incurred. I do not like these ideal gains; nor do I believe that bullion has ever been remitted to Europe to be coined, and returned in the shape of English guineas. If remitted, I believe it has been done to pay our debts. I believe the value of the coin is altogether ideal. It is not the shape, but the intrinsic value by which it is estimated. I therefore consider the expense of coinage as so much loss, and infer that we ought to dispense with the establishment.

It is optional in the House to postpone the bill to the next session, or make provision now for a copper coinage. I am perfectly willing to give some officer the power of contracting for a copper coinage. This is the only thing we can now do.

Mr. S. SMITH said, that he was against the postponement. He wished the subject decided on during the present session. On examining the last report of the Director of the Mint, he found that the whole quantity of gold, silver, and copper, coined from the commencement of the Mint, until February last, amounted, agreeably to the report, only to \$3,045,000. The coinage of which had actually cost the United States \$296,957, be-

ing nearly ten per cent. on the whole amount coined. If the motion to postpone should not succeed, I will move to recommit to a select committee, in order to bring in a section to provide for the coinage of cents and half cents by contract.

Mr. ELMENDORF said, he rose to state the result of his inquiries. On making inquiry of the Secretary of the Treasury, it was stated that Government had a great quantity of copper on hand, which it was found very difficult to dispose of. He gave this information to show that no inconvenience would result from having no new copper coinage during this and the ensuing year. The report states that the expense of importing cents is not more than £20 per ton. This is so much less expensive than to impress the coins ourselves, that I should prefer importing them.

The question of postponement to the next session was then taken, and lost—yeas 32, nays 37.

Mr. S. SMITH then moved a recommitment of the bill to a select committee. Carried—yeas 49.

—
SATURDAY, April 24.

A message from the Senate informed the House that the Senate insist on their amendments, disagreed to by this House, to the bill, entitled "An act further to alter and establish certain post roads," and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers on their part.

The House proceeded to consider so much of the message from the Senate, of this day, as relates to the amendments depending between the two Houses to the bill, entitled "An act further to alter and establish certain post roads." Whereupon

Resolved, That this House doth insist on their disagreement to such of the said amendments as have been disagreed to by this House, and insisted on by the Senate, to the said bill.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of the said amendments; and that Mr. ELMENDORF, Mr. SOUTHARD, and Mr. JOHN TALIAFERRO, jr. be appointed managers at the same, on the part of this House.

The select committee, appointed yesterday, made a report to amend the bill respecting the Mint, by providing that the Secretary, of the Treasury, under the direction of the President, be authorized to contract with the Bank of the United States, or with individuals, for the coinage of cents and half cents, provided the amount coined shall not exceed twenty tons annually, and that no expense shall be incurred by the United States; and by further providing, that all the implements and personal effects of the Mint should be retained.

Mr. L. R. MORRIS moved to postpone the consideration of the report till the third Monday in November. Lost—yeas 19.

Mr. GRISWOLD moved a postponement until Monday next. Lost—yeas 23.

The report of the select committee was agreed to with an amendment authorizing the sale of the horses employed in the Mint.

So amended the bill was ordered to a third reading on Monday.

CIVIL LIST.

The House then went into Committee of the Whole on the bill making appropriations for the Civil List.

The several blanks were filled up, and some amendments made; when Mr. NICHOLSON moved a new section, making appropriation of — dollars to the Attorney General, and other agents for services rendered under the British Treaty.

Mr. BAYARD opposed the appropriation as illegal. He stated that as the board of Commissioners, under the article of the treaty to which the appropriation referred, had ceased to sit, and the services of the Attorney General and the agents ceased, in his opinion no allowance should be made.

Mr. NICHOLSON stated that, under similar circumstances, the late Attorney General had received the additional compensation.

Mr. BACON opposed the resolution, on the same ground with Mr. BAYARD; when the question was taken, and the motion lost without a division.

The Committee rose and reported the bill, which the House immediately took up.

All the amendments were agreed to without a division, excepting one appropriating 15 per cent. in addition to the permanent allowance made to clerks in the respective departments.

Mr. GRISWOLD moved to disagree to this appropriation, on the ground that the expense of living had decreased, and the duties of the clerks declined.

Mr. NICHOLSON contested both points. He did not think the expenses of living had diminished since the last year, when the same allowance was made; and if the duties to be performed in some departments had diminished, which he did not allow, they had certainly increased in other departments, viz. the Treasury and Post Office departments.

Mr. GRISWOLD's motion was lost—yeas 21, nays 32.

A bill making appropriation for the military service for the year 1802, was read a third time and passed.

Mr. GRISWOLD moved, that the estimate of the Clerk, of the contingent expenses of this House for the present session, be printed.

Mr. S. SMITH moved, that there be added thereto the estimate for the year 1798.

The amendment, and the original motion, were carried.

MILITARY APPROPRIATIONS.

The House took up the bill making appropriations for the military service for the year 1802, in which several amendments were made by general consent.

One of the items of appropriation unites the contingent expenses of the War Department, estimated at \$16,000, and the expenses of what has heretofore been denominated the Quartermaster General's department, estimated at \$48,000 in the sum of \$64,000.

Mr. GRISWOLD moved to divide the item appropriating forty-eight thousand dollars for the de-

partment of the quartermaster general, and for contingencies.

Mr. NICHOLSON said he could not agree to the motion. The Secretary of War was a responsible officer, while the quartermaster general was not. He, therefore, wished to place the disbursement under the direction of the Secretary. There had been, to his knowledge, great abuses heretofore in the quartermaster's department. The Secretary is at present not responsible for the quartermaster general, and before his accounts are settled years may elapse. The present mode of appropriation was not unusual. It was so made in 1797. What has hitherto been the usage? To consider the whole appropriation as a general fund from which money might be drawn as the Secretary of War pleases. The law has heretofore lumped in gross the whole sum allowed for military service. But this bill adopts a new plan. It specifies particularly the several payments to be made. But in the quartermaster's department, where it is absolutely necessary to allow some discretion, it has been thought best to blend these two items to make the Secretary responsible. This has been done to prevent abuses.

Mr. GRISWOLD.—The ideas of the gentleman from Maryland furnish a conclusive argument for the separation of these items. For, if blended, the whole sum may be taken for the quartermaster's department. Nor do we by this bill limit disbursements by the quartermaster general; for, under all expenditures, the warrants must be signed by the Secretary of War. This, therefore, does not place the quartermaster general's department more under the control of the Secretary of War, than it was placed before. Now, if we add sixteen thousand, which may go to the quartermaster's department, we extend the power of abuse. I therefore think that on the plan we are pursuing, we ought to make a separation of this appropriation into two items; then the sixteen thousand dollars will be under the direct control of the Secretary, and the remainder under the control of the quartermaster general.

I know the former course was different. Sums appropriated were considered as grants of money to the department, to be applied to military services under law. This course is now complained of. I confess I do not feel great confidence in the course now pursued. But I am willing to try it, and to allow that if it succeeds, it will be a very fortunate and desirable thing. It is for this reason that I wish to pursue all through the plan according to the report of the Secretary.

Mr. S. SMITH.—It will be remembered that we have now no such thing as a quartermaster's department. It follows that the gentleman from Connecticut (Mr. GRISWOLD) would fill up the blank with what does not exist. If he will examine the report of the Secretary of War, he will find an appropriation desired for what has heretofore been called the quartermaster general's department. But the gentleman is very candid. He says that he does not like this specific appropriation, and yet he is for carrying it so far as to render it impossible for the department to move!

APRIL, 1802.

Military Appropriations.

H. OF R.

It is, however, but fair, that when a new experiment is made, it should be tried in conformity to the ideas of its friends; it is not fair that those inimical to it, should oppose it with hostile ideas. The gentleman says, it will be a good thing if it succeeds. Let him, then, suffer it to be tried. If he permits its friends to go on their own way, then if it fails to succeed, he may say: I warned you against it, and the blame is altogether yours. Not so, if the mode is altered by him; for he will himself then be responsible.

In the year 1801, a law passed appropriating the gross sum of \$2,093,000. [Mr. S. here quoted the law.] The sums thereafter specified were never considered as a restraint on the department. There was no contingent expense; that was included in the sweeping clause, under which the whole sum appropriated might have been applied to contingencies.

For myself, I would just as lief have the old as the new system. I have great confidence in the heads of departments. I should have been well pleased that each head of department should have returned an account specifying the amount expended on each item, that we might be enabled to see where the sum appropriated was exceeded. But I found that the President had recommended specific appropriations. I found a majority of this House for it. I therefore acquiesced. I hope, therefore, the motion will not succeed; but that we shall give those who approve the new mode a fair chance for trying it.

Mr. DANA supposed, though there might be a change of names, there could not be an army without something like a quartermaster general's department. At the opening of Congress we received from the President a commendation of specific appropriations. It is well known that there has been a question for some time as to the most expedient mode of making appropriations. For himself, Mr. D. believed the only proper way was for the Army or Navy to receive a general sum, which shall be limited by law, as to pay, provisions, and other ascertained compensations. Latitude will forever be involved in the quartermaster's department, in the contingencies, and for ordnance, &c. These are the only cases where the laws admit a discretion. In the instance before the House, two of these are combined, and, so far as they go, they completely overthrow the idea of specific appropriations. Mr. D. said he was in favor of this, though he believed it against the President's recommendation, and in the very face of specific appropriations. He was, therefore, against the amendment of his colleague.

Mr. NICHOLSON.—The gentleman from Connecticut (Mr. DANA) says these two items ought not to be involved, because it is in direct opposition to the recommendation of the President, and to our plan. I do not think so. He says there are three objects that necessarily involve great discretion, which are blended in the bill, and that it is proper to blend them. Why, if the gentleman had looked at the bill he would have found the very reverse. For the article of subsistence there is a distinct appropriation amounting to

\$201,000. This is a sum on which the quartermaster general, if there were one, is not any longer permitted to exercise a discretion; for he cannot now go beyond this expense, if he wished. This, too, is specifically in conformity to the advice of the President. An important limitation is here made, where the quartermaster general used to exercise an unlimited discretion. For the Treasury books will show that the quartermaster general stands charged with the enormous sum of eight hundred thousand dollars. Hereafter the quartermaster general cannot avail himself of this latitude. For this purpose we want specific appropriations; but when we specify we ought to take care that we do not go too far. Though the President has recommended our making appropriations more specific than they have heretofore been, he did not affirm to what length, in his opinion, the specification should extend. But he had seen that great abuses had taken place, and therefore he recommended measures to correct them.

According to the former mode the appropriations were made as general as could be, so that the officers of the War Department could incur nearly such expenses as they please. Not so under this bill. But it ought to be remembered that there may be expenses under the article of contingencies that may exceed sixteen thousand dollars. So in the department of the quartermaster general, they may exceed forty-eight thousand dollars. It is impossible rigidly to assign the limits of those expenditures. It has, therefore, been thought better to blend them together, and make the Secretary responsible. Whether we can make the former Secretary responsible for the quartermaster general I do not know; perhaps we cannot. The quartermaster stands charged with eight hundred thousand dollars; he has sold property to the amount of three hundred thousand dollars, and though written to, his accounts cannot be got. To remedy these evils we now make specific appropriations.

Mr. EUSTIS said he thought the blending or separation of these items amounted to the same thing. If you appropriate forty-eight thousand dollars to what has heretofore been denominated the quartermaster's department, you allow the Secretary to expend that sum at the different posts.

The question was then taken on Mr. GRISWOLD's motion to separate the items, and lost—ayes 17.

When the bill was ordered to a third reading.

MONDAY, April 26.

An engrossed bill making appropriations for the support of Government, for the year one thousand eight hundred and two, was read the third time, and passed.

An engrossed bill to repeal so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States," the other an act, entitled "An act supplementary to the act establishing a Mint, and regulating the

coins of the United States," as relate to the establishment of a Mint, was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making provision for the redemption of the whole of the public debt of the United States," with several amendments; to which they desire the concurrence of this House.

The House then proceeded to consider the said amendments of the Senate: Whereupon,

Resolved, That this House doth agree to the same.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints;' and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be read the third time to-morrow.

A message was received from the Senate informing the House that they had passed the bill for abolishing the Board of Commissioners of the City of Washington, with certain amendments.

On motion, it was

Resolved, That the Secretary of the Treasury be required to make report and return to this House, in the first week of the next session of Congress, of the abstracts and lists of the valuation of lands and houses made in the several States, pursuant to the act "to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" and that he cause two hundred copies of the said report and return to be previously printed, and transmitted, for the use of Congress, at the time aforesaid.

The House, resolved itself into a Committee of the whole House on the bill to incorporate the inhabitants of the City of Washington, in the District of Columbia; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A Message was received from the President of the United States, in relation to the settlement of limits &c with the State of Georgia. The Message, and papers transmitted therewith, were read, and ordered to lie on the table.

Mr. JOHN TALIAFERRO, junior, from the Committee appointed, presented a bill additional to and amendatory of, an act, entitled "An act concerning the District of Columbia; which was twice read and committed to a Committee of the whole House to-morrow.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act for the relief of the widows and orphans of

certain persons who have died, or may hereafter die, in the Naval service of the United States," with several amendments; to which they desire the concurrence of this House.

The House took up the amendments of the Senate to the bill abolishing the Board of Commissioners of the City of Washington, &c.

One of these amendments contained a number of distinct sections for establishing a company for cutting a canal to unite the main Potomac with the Eastern Branch thereof. Committed.

JUDICIARY SYSTEM.

A message was received from the Senate informing the House, that they had agreed to all the amendments made by the House to the bill "to amend the Judicial system of the United States," excepting one, viz: that which struck out the section that transferred the nomination of commissioners of bankruptcy from the district judges to the President, on which they insist.

Mr. GILES moved that the House should recede from the amendment.

This motion was supported by Messrs. TALIAFERRO, ELMENDORF, HOLLAND, S. SMITH, and MITCHILL, and opposed by Messrs. BAYARD, GRISWOLD, GODDARD, and MOTT.

The question was taken by yeas and nays, and carried—yeas 45, nays 27, as follows.

YEAS—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, and Isaac Van Horne.

NAYS—John Archer, James A. Bayard, John Campbell, Manasseh Cutler, John Davenport, Thomas T. Davis, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, James Mott, Anthony New, Joseph H. Nicholson, Nathan Read, William Shepard, John Smith, of New York, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, John Trigg, Peleg Wadsworth, and Lemuel Williams.

TUESDAY, April 27.

An engrossed bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, was read the third time: Whereupon a motion was made, and the question being put, to amend the bill at the Clerk's table, by adding to the end thereof a new section, in the words following, to wit:

"Provided always, and be it further enacted, That no tax shall be imposed by the City Council on real property in the said city, at any higher rate than three

APRIL, 1802.

District of Columbia.

H. OF R.

quarters of one per centum on the assessment valuation of such property :”

It was unanimously resolved in the affirmative.

Ordered, That the said amendment be present-ly engrossed, and, together with the bill, be read the third time. The said amendment being brought in engrossed, the bill, as amended, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative.

The bill sent from the Senate, entitled “An act supplementary to an act, entitled ‘An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned,’ and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints,” was read the third time; and on the question that the same do pass, it was resolved in the affirmative.

A Message was received from the President of the United States, transmitting a copy of the Convention with Great Britain. The Message was read, and, together with the Convention transmitted therewith, ordered to be referred to the Committee of Ways and Means.

Mr. SAMUEL SMITH, from the committee appointed the seventh of January last, on the memorial of Evan Thomas and others, and to whom was referred, on the twenty-seventh of the same month, a Message from the President of the United States relative to trade and intercourse with the Indian tribes, reported a bill to revive and continue in force an act, entitled “An act for establishing trading-houses with the Indian tribes;” which was read twice and ordered to be engrossed and read the third time to-day.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled “An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States:” Whereupon,

Resolved, That this House doth agree to the said amendments.

An engrossed bill to revive, and continue in force, “An act for establishing trading-houses with the Indian tribes,” was read the third time and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled “An act to extend, and continue in force, the provisions of an act, entitled ‘An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes;” to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the Whole House to-morrow.

Mr. MITCHELL, from the committee appointed on so much of the President’s Message as relates to naval sites, &c., made a further report. The report concludes as follows:

“The committee find that, prior to the fourth of March 1801, the sum of one hundred and ninety-nine thousand

and thirty dollars, and ninety-two cents, have been expended in purchasing navy yards and making improvements upon them, without any law authorizing the purchase, or any appropriation of money, either for purchase or improvements.”

DISTRICT OF COLUMBIA.

The House went into Committee of the Whole on the bill respecting the District of Columbia.

[This bill vests certain chancery powers in the courts of the District—alters the periods of holding the courts viz: for Washington county to be held in July and December; for Alexandria county in June and November; directs that no person shall be held to bail unless resident for two months in the Territory—directs that no execution on the person of the debtor shall be issued for judgments under twenty dollars, but that all such process shall hereafter go against the effects of the debtor, executed by the constable, under reduced fees; gives to the Corporation of Georgetown the power of taxing town lots for specified purposes; repeals so much of acts of 1801, as provide for the compensation of jurors and witnesses, with other provisions.]

Mr. GRISWOLD moved to strike out the fourth section, which directs that no person shall be held to bail unless resident for two months in the Territory.

This motion was supported by Messrs. GRISWOLD, HENDERSON, BAYARD, and NICHOLAS; and opposed by Mr. TALIAFERRO. The motion was agreed to.

Mr. GRISWOLD moved to strike out the section, which saves the person from arrest for debts under twenty dollars.

The Committee then rose and reported the bill.

Mr. GRISWOLD moved to recommit it. The motion was carried, and the House adjourned.

WEDNESDAY, April 28.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, enclosing his report on the memorial of Ferdinand Mullenheim, referred to him, by order of the House, on the fifteenth ultimo; which were read, and ordered to lie on the table.

Mr. JOHN TALIAFERRO, junior, from the committee to whom was yesterday recommitment the bill additional to, and amendatory of an act entitled “An act concerning the District of Columbia,” as amended by the Committee of the Whole House, reported an amendatory bill; which was read twice, and ordered to be engrossed and read the third time to-day.

A message from the Senate informed the House that the Senate have passed the bill, entitled “An act to repeal, in part, the act, entitled ‘An act regulating foreign coins, and for other purposes,’ with two amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments: Whereupon,

Resolved, That this House doth agree to the same.

The House resolved itself into a Committee of the Whole on the amendments of the Senate, to

H. OF R.

Proceedings.

APRIL, 1802.

add nine new sections to the end of the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland, for the use of the city;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same, with several amendments; which were read, and partly considered.

Ordered, That the farther consideration of the report of the Committee of the Whole House be postponed until to-morrow.

An engrossed bill additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia," was read the third time and passed.

A petition of Thomas Cooper, of the county of Northumberland, in the State of Pennsylvania, was presented to the House and read, setting forth that, in the month of April, eighteen hundred, he was tried and condemned at Philadelphia, before Samuel Chase and Richard Peters, judges of the circuit court of the United States there sitting, for having written and published a libel upon the political character and conduct of John Adams, the then President of the United States; and was thereupon adjudged to pay a fine of four hundred dollars, and to suffer an imprisonment of six months; which punishment he accordingly underwent; that he apprehends the said trial, condemnation, and punishment, were unjust: first, because the law, commonly called the Sedition law, under which he was indicted, was passed in direct opposition to the letter and the spirit of the Constitution of the United States; and secondly, because the said judges did not only take for granted the constitutionality of the said law, but did unjustly and improperly refuse to grant him a *subpœna ad testificandum*, directed to the said John Adams; and therefore praying such redress as the wisdom of Congress shall deign to bestow.

Mr. GRISWOLD moved to reject the prayer of the petition.

Mr. GILES moved to postpone the consideration of the petition till the third Monday in November.

On this motion a debate ensued, in which Mr. GILES and Mr. RANDOLPH supported, and Mr. GRISWOLD and Mr. BAYARD opposed the motion.

The question on postponement was carried, by a large majority.

THURSDAY, April 29.

Mr. NICHOLSON, from the committee appointed on the fourteenth of December last, to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been accounted for, and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with the public money, made a report; which was read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill, entitled "An act to extend

and continue in force the provisions of an act, entitled 'An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes;' and, after some time spent therein, the Committee rose and reported progress.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill stated in the foregoing message: Whereupon,

Resolved, That this House doth agree to all the said amendments.

A message from the Senate informed the House that the Senate have also passed the bill, entitled "An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill last mentioned, and, the same being read, were agreed to.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making an appropriation for carrying into effect the Convention between the United States and the King of Great Britain; which was read twice, and committed to a Committee of the whole House this day.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally read and agreed to.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time this day.

The House resumed the consideration of the amendments reported yesterday from the Committee of the Whole to the amendments of the Senate to the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city;" and the same being read were agreed to.

Resolved, That this House doth agree to the amendments of the Senate to the said bill.

On motion, it was

Ordered, That the committee to whom was referred, on the twenty-sixth of February last, a letter from William Henry Harrison, Governor of the Indiana Territory, enclosing certain resolutions of the grand jury of the county of Knox, in the said Territory, asserting the rightful claim of that Territory to the Island of Michilimackinac, and its dependencies, as an integral part of the

APRIL, 1802.

Proceedings.

H. OF R.

said Territory, in opposition to the claim of the Government of the Northwestern Territory, to the same, be discharged from further proceeding thereon.

Mr. JOHN TALIAFERRO, Jr., from the Committee appointed to inquire whether any, and what, amendments are necessary in the existing laws and government of the Territory of Columbia, and to whom were also referred sundry memorials and petitions of the inhabitants of the said Territory, made a report thereon: Whereupon,

Ordered, That the Committee be discharged from the further consideration of the said petitions and memorials.

An engrossed bill making an appropriation for carrying into effect the Convention between the United States and the King of Great Britain was read the third time, and passed.

Ordered, That the committee to whom was referred, on the eighteenth of January last, the petition of John Cleves Symmes, be discharged from further proceedings thereon.

FRIDAY, April 30.

A message from the Senate informed the House that the Senate have passed the bill making appropriations for the support of Government for the year one thousand eight hundred and two, with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill last mentioned, and, the same being read, were agreed to.

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on Saturday, the first of May.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House again resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to extend and continue in force the provisions of the act, entitled 'An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes.'"

The said bill was then read the third time, and, on the question that the same do pass, it was resolved in the affirmative.

Resolved, That the Postmaster General be requested to establish a post office at or near the Capitol, on or before the next session of Congress.

Mr. ELMENDORF, from the committee to whom was committed the bill from the Senate to empower John James Dufour, and his associates, to purchase certain lands, reported that the committee had had the same under consideration, and made no amendment thereto.

The said bill was then read the third time, and, on the question that it do now pass, it was resolved in the affirmative.

Ordered, That the further consideration of the bill to provide more effectually for the due application of public money, and for the accountability of persons entrusted therewith, be postponed until the third Monday in November next.

Ordered, That the further consideration of the report of the committee to whom was referred, on the nineteenth of January, the petition of Memucan Hunt and others, addressed to the General Assembly of North Carolina, and, also, sundry resolutions of the said Assembly, relative to a claim for the value of certain lands in the State of Tennessee, be postponed until the third Monday in November next.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the eighth of March last, on the memorial of Henry Messonier; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Henry Messonier, from any money in the Treasury, not heretofore appropriated by law, the sum of six hundred and fifty-five dollars and ninety cents, being the amount of duties paid by him on fourteen hogsheads of coffee, imported in the ship Pacareau, Captain Latour, and entered at the port of Baltimore, on the eighteenth day of February, one thousand seven hundred and ninety-four, which sum had also been paid, on the same fourteen hogsheads of coffee, by Champaign and Deyme.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

A message from the Senate informed the House that the Senate have passed the bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments, and the same being read, were agreed to.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill for the relief of Henry Messonier; which was read twice, and committed to a Committee of the whole House immediately.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time this day.

An engrossed bill for the relief of Henry Messonier was read the third time, and its further consideration postponed until the third Monday in November next.

Resolved, That the Clerk be directed to procure a clock for the use of the House of Representatives, and cause it to be placed in some convenient part of the Representatives' Chamber.

H. OF R.

Disbursement of Public Moneys.

MAY, 1802.

A message from the Senate informed the House that the Senate have passed the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider said amendment, and the same being read, was agreed to.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

SATURDAY May 1.

Ordered, That there be a call of the House on Monday next, at ten o'clock in the forenoon.

A message from the Senate informed the House that the Senate have agreed to the resolution of this House, of the thirteenth ultimo," authorizing an adjournment of the two Houses of Congress," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said amendment of the Senate, and the same being read, was agreed to.

A message from the Senate informed the House that the Senate have agreed to an amendment and modification of the amendments depending between the two Houses to the bill, entitled "An act further to alter and establish certain post roads," agreeably to a report thereon, made this day to the Senate, by the conferees appointed on their part.

The House proceeded to consider the message of the Senate of this day, and the report of the joint committee of conference, transmitted therewith, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act further to alter and establish certain post roads." Whereupon,

Resolved, That this House doth concur with the Senate in their agreement to the amendment and modification of the said amendments, as proposed by the Joint Committee of Conference thereon.

DISBURSEMENT OF PUBLIC MONEY.

Mr. GRISWOLD.—Notwithstanding the late period of the session, I feel it my duty to call the attention of the House to a subject of some importance, and which has not, during the session, met with any particular consideration. That subject is, the report of the select committee, who were appointed to investigate, "whether moneys drawn from the Treasury have been applied to the objects for which they were appropriated."

I should consider myself inexcusable for introducing this subject at the present time, when the session is to continue only one day longer, and the usual hour of adjournment has nearly arrived, if it had been possible to have called it up at an earlier hour; but it is well known that, although the committee were appointed at a very early period of the session, they made their report only the day before yesterday, and it has appeared on our tables in a situation to be examined for the first time this morning.

It may, perhaps, be inquired that, being a member of the committee, if it was my intention to bring the report under discussion, it would not have been my duty to have submitted some motion to the House as soon as the report was first read at the Clerk's table; but if it had been possible for me to have submitted a motion, it is obvious from the length of the report, and the detail which it contains, that it would have been impossible for gentlemen to have understood the subject without having the report in some shape before them. But the fact really is, that, although a member of the committee, I have known little more about the report than any other member of the House.

The course which this subject took in the committee, it may be necessary, in a very concise manner, to explain. The whole committee attended the investigations at the Executive offices, but the minority had no knowledge of the intentions of the majority; and, for one, I declare that, although I attended the committee very regularly in their public investigations, yet I did not receive the smallest hint of the intentions of the majority—what report they intended to make, or whether any, during the present session, until two days before the report was made to the House; on which day the committee were called together an hour before the meeting of the House, to agree upon a report. When we met, the report was presented to us, already drawn up in its present shape, and we were requested to hear it read, to make our objections or give our approbation. This was certainly an unusual and a very short mode of making a report, upon a subject which had been deemed sufficiently important to engage the attention of the committee for nearly five months. We accordingly had the report read, and although it was impossible, from this hasty examination, to go into much detail, yet a single reading was sufficient to enable us to discover that the report was excessively erroneous. Some of the errors were mentioned, and, for reasons which I will not take up the time of the House at this time to detail, the subject was postponed until the next morning, although the majority had designed to make their report on that day. In the mean time, the minority requested copies of the report, that they might deliberately examine every part of it, and compare it with their recollection of facts. These copies it was agreed should be furnished, but, in consequence, I presume, of the length of the report, they were not procured, and the minority had no opportunity of examining the report with any attention. When the committee met the next morning, the subject was again postponed, in consequence of a discussion upon one detached part of the report, and the report was not of course delivered to the House until the morning following, when it appeared in its original form; I mean in every essential point. I have mentioned these circumstances because I think it important that they should be known, and because I believe they will satisfy the House that it has not been in the power of the minority of the committee to enter into a discussion of the report, until they obtained, in common with the

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

other members of the House, the printed copies this morning.

I will likewise add a further fact, whilst I am explaining the proceedings of the committee. It is: that three members of the seven who composed the committee, were decidedly opposed to the report in all its partial parts; and the report must be considered as the act of a bare majority. The House will be satisfied, I trust, by the reasons which I have stated, that it has not been my fault that the motion which I am now about to submit has been delayed to this late hour.

My motion is, that the report be recommitted to a select committee, for the purpose of correcting the many errors which it contains; and I must be indulged in stating, as concisely as possible, some of the reasons on which I ground this motion.

The report is evidently calculated to impress the public mind with unfavorable sentiments respecting the conduct of the late Administration, and particularly the conduct of several individuals who have been, and still are, held in high estimation by a numerous class of well-informed and virtuous citizens. This impression ought not to be made, because the real facts, which exist in relation to every transaction to which the report alludes, can warrant no such impression.

The report, I shall attempt to show, is excessively erroneous, both in the facts and the inferences which it states. I wish not, however, to be understood, by any remarks which I may make, to implicate the committee; I have nothing to do with the motives which regulated their conduct; I presume they were virtuous, and that when they calmly examine their own proceedings, they will readily consent to correct their errors.

It will be impossible at this time, to go as fully into an examination of the report as I could wish, and I shall be compelled, from the peculiar situation of the House, to confine my remarks to those parts which are the most prominent.

The first object which has received the animadversion of the committee, is the expense of removing the Executive officers and their clerks from Philadelphia to the seat of Government. This expense, which amounted to \$32,872 34, the committee say, "was drawn from the Treasury and expended without any legal authority." This is a strong expression, and ought to be very clearly supported, to justify the committee in uttering it. Let us, however, examine the authority under which the money was drawn from the Treasury, in consequence of a decision of the accounting officers of that department, and it will not be doubted but that the law has made it the duty of those officers to decide this very question; nor will it be contended that the decisions of the accounting officers, fairly and honestly made, are not a sufficient justification for the payment of all public accounts. How, then, can the committee say that these moneys were paid without any legal authority, when it is certain that these accounts of expense were regularly presented and allowed by the tribunals who were authorized and directed by law to decide upon them? I should

ask the committee, under what other authority than the decisions of the accounting officers, can money, in strictness, ever be legally paid at the Treasury? It is not, certainly, in the power of the House of Representatives to audit the public accounts, or to reverse the decisions of the accounting officers, much less are a committee of the House clothed with any such powers. If the committee, instead of deciding over the head of the regular tribunals, had told us the whole truth upon this point—if they had explained the power of the Treasury Department, and stated the fact, that this department had regularly admitted and paid the accounts, it is certain that the opinion which they have reported would have appeared without any foundation; and although it might remain a speculative question with individuals, and some might be of opinion that the decision of the Treasury was right, and others might believe it to be wrong, yet all parties would concur in the opinion that the decision was conclusive, and the money paid in consequence of it, was paid under a legal authority.

If, however, we indulge ourselves in revising the Treasury decision upon this question, I am inclined to believe that we shall find it correct. The law of 1790, which fixes the permanent seat of Government, provides, "that the offices attached to the seat of Government shall be removed to the District of Columbia on the first day of December, 1800, by their respective holders," and declared that the necessary expense of such removal should be defrayed out of the duties on imports and tonnage. By this law, the holders of the offices were directed to remove them, and the question is, how and to what extent was the removal to be made? It will be admitted, I presume, that the offices were to be removed in an efficient manner, that is to say, in such a form as to enable the Executive departments to perform their duties without delay at Washington. The officers, in removing their offices, were certainly obliged to remove themselves, for they held the offices in their own persons, and the operation could not be performed without their personal removal. Nor could the offices be removed in such a form as to perform their duties at the seat of Government without carrying along with them the clerks; the clerks were attached to the offices, and without them, the offices could not be said to be efficiently removed. It would then, I think, result from this view of the subject, that the direction of the statute to remove the offices, necessarily gave an authority to remove every individual connected with the offices, and whose services were necessary for transacting the public business. And if the individuals were to be removed, I should presume that no doubt could exist but that they must and ought to be removed in such a manner as to render their situation comfortable in this place—I mean with their families and furniture; and whether they transported a trunk too much or not, would be an inquiry too contemptible to occupy the attention of the House.

What induces me to think still more favorably of the decision of the Treasury, is the strong equi-

ty on which the decision rests. It is, at this time, well understood, and, indeed, settled, by the act of the present session, that the allowances to the Executive officers and clerks was fixed upon the principle of their remaining permanently at one place, and nothing has been, or now is, included in the regular compensation of those officers for the extra expense of travelling on public business from one place to another; such extra expense must, in the nature of things, be compensated by extra allowances; and, although it is true, as the committee say, that the officers and clerks were at this time receiving their pay from the Government, yet they were only receiving the usual compensation, which was not higher than the same grades of officers receive at this time. Can it, then, be doubted, when the Government required these officers to incur the extraordinary expense of removing one hundred and fifty miles, with their families, that the extra expense should be discharged by Government, whether that expense consisted of losses, resulting from the removal, or charges of travelling? Finding, then, the legal decision and the equity of the case so strongly against the committee, I think myself warranted in saying that this part of the report is erroneous.

It is further to be remarked, that the committee have not explicitly declared by whom these payments were made, but the report is so expressed as to leave no doubt that the committee intended it should be understood that the payments were all made under the former Administration, whereas the fact I believe to have been that, although a greater proportion of them were made under the former Administration, yet that some payments were since made; and if my information is correct, and I trust it will be found so, for it is derived from the most authentic source, one advance was made by the present Secretary of the Treasury by a warrant on the Treasury, even before the account of the individual was settled or allowed. This circumstance is important, inasmuch as it furnishes a recent precedent to justify the former decision, and will induce the committee to examine their proceedings with more caution, when they find that, in condemning the former Administration, they are at the same time implicating their friends; for it will not be contended, I presume, that if, as the committee say, no authority existed for this expenditure, the precedent of the former Administration could justify the advance made by the present Secretary.

The next important object which the report has noticed, is the accounts in the War and Navy Departments. Upon this subject the committee say, there remains in the War Department more than three millions of dollars "unaccounted for or not yet settled," and in the Department of the Navy more than four millions, "an unaccounted for or unsettled balance."

This statement, although it does not contain any explicit charge against those departments, yet it is so expressed as to countenance those infamous falsehoods which have appeared in certain newspapers, charging the departments with the

embezzlement of the public money. A charge which the committee certainly did not intend to countenance. The report ought to have been more explicit upon this point; the committee ought to have explained what they intended by "balances unaccounted for or unsettled." I take the liberty of declaring that, although in point of form it may be true, that these sums remain unaccounted for, yet, in fact, nothing comparable to it exists. The mode in which business is transacted in the offices of the accountants of the War and Navy, I understand to be this: whenever a sum of money is advanced to an individual, he is immediately charged with it; and although it may have been advanced for services actually rendered, or supplies furnished, yet nothing is passed to his credit till a voucher is produced for every item in the account, and the account, although nothing is due upon it, remains unsettled, and, in the sense of the committee, a balance unaccounted for. In this manner, these millions mentioned by the committee are principally made up. For instance, in the War Department, the account of the Quartermaster General remains unsettled to the amount of nearly nine hundred thousand dollars; his account, however, has been rendered, accompanied, as I understood, by vouchers which cover the whole amount, but in consequence of some dispute or uncertainty respecting a small part of the account, it remains open, and the whole of this large sum has gone in to make a part of the balance unaccounted for in the War Department. Other accounts are in the same situation, and it is from such facts that the committee have thought themselves justified in declaring that these balances remain unaccounted for.

In the Department of the Navy, although, from the causes which I have mentioned, there remains a great number of open accounts, amounting to more than four millions of dollars, yet the accountant declared to the committee that vouchers had been transmitted to the office, covering the whole sum, except about five hundred thousand dollars; but the accounts were not settled, nor the vouchers carried to the credit of the particular accounts, because the mode of settlement did not warrant the entry of any credit until every item was covered by a voucher. The accountant further declared, that this sum of five hundred thousand dollars consisted principally of moneys recently advanced for the current service, for which vouchers were constantly coming in, and that on winding up the whole account of that department, he was persuaded that Government would not sustain losses to exceed ten or twelve thousand dollars.

Under such circumstances, can it be imagined that the committee were justified in talking about millions unaccounted for? Or, if they thought proper to do it, should they omit to explain, in a more ample and satisfactory manner, their meaning? Ought not the facts which I have mentioned, on every principle of fairness and truth, to have been annexed to that report! If this had been done, it would have appeared that the disbursements of the War and Navy Departments

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

were made with so much attention and good fortune, that the losses of the Government have been less than are generally experienced by merchants in transactions of equal extent.

It is said, that the documents which attend the report will explain this point. I must be permitted to say that the report will be published in every newspaper, (for which purpose it appears to be principally intended,) whilst the voluminous documents will be very much confined to the members of this House, and never read by those who will read the report.

Again, the committee say that four navy yards were purchased without authority, and the money misapplied which was paid for them. In my judgment, this is one of the most extraordinary opinions ever pronounced. The facts which gave rise to the purchase of the navy yards were as follows: In the year 1799, Congress authorized by law the building of six 74-gun ships, and one million of dollars was then appropriated for that object, and for building six sloops-of-war. The Secretary of the Treasury found that the committee ought to have understood that ships could not be built either in the air or upon the water, and as he was directed to build the ships, that he must, of course, procure land to place them upon, and that the land must be either purchased or hired. He found that there was not a navy yard within the United States calculated for building ships-of-the-line, and that the expense of preparing yards upon private property would be lost the moment the ship was launched, and of course that this would be bad economy. Experience had likewise taught him, that the better mode would be to purchase the ground, as it would then remain at the control of the Government, so long as it was wanted, and the improvements would be saved. This course was accordingly pursued, and I believe that few gentlemen, except the committee, will conclude that it was not the wisest and best. But whether it was the best course or not, it was certainly authorized by law, because it can never be seriously doubted, whether a law which directs a thing to be done, does authorize the agents to be employed to do everything which becomes necessary for accomplishing the object. The laws which have authorized the building of ships have certainly empowered the public agents to purchase timber, copper, cordage, and every other necessary material, and yet no law for those objects has ever named any one of those articles. On the same principle, the law which directed the building of these particular ships, necessarily authorized the public agent to procure the ground to place them upon, although it was not said, whether the ships should be built upon the water or upon the land.

But there has been one omission in this part of the report, which, on every principle of fairness ought to be connected with it, and for which purpose the report ought to be recommitted: the omission of the letter of Mr. Stoddert, late Secretary of the Navy, explanatory of the purchase made by him of the navy yards, addressed to the committee, in answer to an application made by them

upon this subject. This letter contains, in my opinion, a complete justification of that transaction, and was so viewed by the minority of the committee, who urged that it might, at least, be included in the report; but, to our astonishment, the minority refused this justice to the man whom their report had implicated. This opinion of the majority, in respect to the propriety of including Mr. Stoddert's letter, I must believe, will remain a solitary one, for I can scarcely imagine it possible that any other gentleman in this House would have refused, when they presented a charge against this gentleman with one hand, to offer with the other his vindication, written at their own request. If, however, the motion to recommit should prevail, I will then move an instruction to the committee, which will produce Mr. Stoddert's letter.

The committee have likewise thought proper, in general terms, to censure the expenditure for erecting the public buildings on the banks of the Schuylkill, near Philadelphia. They do not say whether the money expended upon that object was authorized or unauthorized; they only say that the expense, which amounted to about one hundred and fifty thousand dollars, could not be justified. Without troubling the House with any comments upon the propriety of this conduct of the committee in passing the bounds which their appointment had limited, and erecting themselves into a board of censors, to condemn every expenditure which did not please them, whether authorized or not, I must be permitted to say, that nothing, in my judgment, could excuse them, if they took this course, in suppressing the facts which led to the erection of those buildings.

That the expense was justified by law, I presume cannot be doubted, when the object and the nature of the appropriations for the Military Establishment are considered. And as to the extent of the expense, it is a point about which gentlemen may probably differ in opinion. For my own part, I readily acknowledge that I am not a competent judge, nor do I believe (I speak with great deference) that the majority of the committee possess sufficient experience to decide the question. The former Secretary of War, who commenced the buildings, (Mr. McHenry,) was certainly a man of liberal mind and of large and extensive views, and disposed to found every permanent establishment upon a scale which should in some measure comport with the future prospect of this country, and prove them to be the establishments of a nation, and not of a petty corporation. The circumstances which induced the War Department to commence these buildings, I have understood to be, (without having received, however, any particular information in relation to the fact,) that the military stores at Philadelphia were at that time stored in private buildings without the city, and exposed in those situations to fires and accidents; that Philadelphia being one of the finest mercantile towns in this country, rendered it convenient to collect stores at that point, and being at the same time sufficiently inland to be secure from any foreign attack, and withal some-

what central, it was desirable to render the collection of military stores extensive, and to establish what may be now called an arsenal at that place. To accomplish these objects, and for other military purposes, the buildings were commenced on the Schuylkill. And being disposed to place more confidence in the Secretary of War than in the committee on this point, I can see nothing at present which proves the building to have been unnecessary or too extensive, and I think it highly probable that the founder will hereafter derive more honor from commencing them than the committee will receive from censuring the measure.

What renders the report of the committee still more extraordinary, both in respect to erecting the buildings, and also the purchase of navy yards, is, that another subject, resembling these in principle, was before the committee, and on which they refused to report. This was the erecting of the extensive navy stores in this place by the present Administration.

The present Secretary of the Navy was requested to inform the committee when those stores were erected, and from what fund the money had been taken. His answer satisfied the committee that the stores had been erected by the present Administration, and that the money, if I recollect correctly, had been taken from an appropriation for the 74's, navy yards, and docks. The minority of the committee believed, what I trust will be generally believed by those who examine the question, that this was (to say no more of it) at least as doubtful an expenditure as that for the purchase of navy yards, or for erecting the buildings on the Schuylkill. If an authority to build 74's, to complete navy yards and docks, gave an authority to erect stores for the accommodation of the navy, it was thought that an authority to build ships, necessarily included a power to procure the land to place them upon; and that an authority to purchase military stores and to manage the affairs of the army necessarily included a power to furnish, at the public expense, buildings to cover the stores, and for other necessary military purposes, at the discretion of the officers entrusted with those concerns. The minority of the committee, therefore, urged to include this transaction in the report, together with the letter of the Secretary of the Navy, but the request was rejected by the majority. We believed that the cases were precisely similar in principle, and that it was not conducting with impartiality to include the one without the other; and we have thought that when it was discovered that the present Administration was conducting on principles precisely similar to those of their predecessors, it would greatly tend to satisfy all parties that the conduct of the Government had been correct. I feel no hesitation in declaring that, in my judgment, the present Administration were authorized to erect the navy stores, although I believe that the power may be better questioned than it could be in the other cases. These navy stores, I presume, are useful both for receiving the necessary materials for ship building, and se-

curing the stores of the public ships laid up in ordinary; and although not expressly authorized by the words of the law, may very well be considered as a proper appendage to a navy yard, or as buildings rendered necessary in the finishing of the 74's; and as to the extent of the buildings, I am content to leave that point to the Department to which it has been confided. The propriety, however, of including this statement in the report (I trust) will be apparent to the House, and it will not in this place be thought correct to confine our criticisms exclusively to the past Administration. I therefore urge this as a further reason for recommending the report.

The committee have likewise mentioned the payment of about two hundred dollars to some persons at Georgetown, on account of a house which had been hired in that place by Mr. McHenry, the former Secretary of War. If the committee believed it proper to trouble the House with this trifling transaction, they ought to have stated every circumstance which attended it, and the House could then decide (if, indeed, it was proper to decide at all) whether the payment was rightly made or not. Since the committee, however, have not done this, I beg leave to state what I have understood to be the circumstances under which this payment was made.

In the Spring of 1800, whilst the Government remained at Philadelphia, Mr. McHenry was Secretary at War, and being obliged to prepare for removing his office, agreeably to law, to the permanent seat of Government, he found it necessary to engage a house in Georgetown, in the vicinity of the public buildings, for himself and family. After this was done, and without any previous notice, he was compelled to resign his office, by a request from the President, which in such case may be considered as a command. The house, of course, became useless to him, and the person of whom he hired it claimed either rent or damages, and, upon a reference, the sum of about two hundred dollars was awarded. It is obvious, from this statement, that the expense was incurred by Mr. McHenry in consequence of being Secretary of War; that it was an extra expense, arising entirely from the order to remove from Philadelphia to Washington, and that it was a dead loss, produced by these causes, and for which Mr. McHenry did not receive the benefit of a cent. Under these circumstances, it was decided that Government ought to pay the loss; and if the committee had given us the facts, it is highly probable that the House would be of opinion that the decision was right.

Much has been said by the committee respecting a payment to Mr. Tracy for his services and expense in visiting the Western posts in the Summer of 1800. And here the committee have again, in the usual manner, excluded from their report the cases which have arisen under the present Administration, and which compare in principle with the case of Mr. Tracy.

It is objected to the employment of Mr. Tracy and the payment to him, because he was at that time a Senator of the United States, and by the

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

Constitution no member of the Legislature can hold at the same time an Executive office. But the case of Mr. Dawson, who was sent to France with the convention, compares essentially with the case of Mr. Tracy. Mr. Dawson continued in the employment of Government under that agency, and received his pay, after he was elected a member of this House. His account was before the committee, and it appeared that he was paid up to the month of October. And surely the Constitution has made no distinction between the members of the House and of the Senate. If it was right and Constitutional to employ Mr. Dawson on one agency, it was equally so to employ Mr. Tracy on another.

It is likewise objected to the account of Mr. Tracy, that his agency continued up to the commencement of the last session of Congress, and he was paid accordingly, and that in his account, as a Senator, he has likewise been allowed what is usually called travel from Litchfield to Washington, by which means he received (it is said) wages as an agent and travel as a Senator at the same time. But the committee forgot to include the cases of the new Senators who went from this House into the Senate last Spring. Mr. Stone of North Carolina, Mr. Sheafe of New Hampshire, and, I presume, Mr. Muhlenburg, also retained their seats in this House until the 3d of March, and they received their pay up to that time, and their travel at the commencement and at the close of the session; they went the next day into the Senate, and the two former, and probably the latter, received during that short Senatorial session their travel to and from the seat of Government. If it was right to allow those gentlemen what the committee would, I presume, call double pay, it cannot be objected to in the case of Mr. Tracy, who was employed as an agent up to the commencement of the session, entitled to receive his pay as such, and likewise entitled to his mileage as a Senator upon the settlement of that account.

I have not, however, been able to discover that either of these cases are repugnant to law. The Constitution declares "that no person holding any office under the United States shall be a member of either House during his continuance in office." An office can only be created by the Constitution or by law, and there is neither a law or a provision in the Constitution creating an office in which either Mr. Tracy or Mr. Dawson was employed. The employment in which they were engaged was a mere agency, and could not with more propriety be called an office than the employment of purchasing bills for Government, upon commissions, or the building of a light-house upon contract. I cannot, then, see any Constitutional difficulty in either of these cases. If, however, any such objection did exist, I should rather suppose that the right of a Senator had become vacated, belonged exclusively to the Senate, and that the business of investigating the right of the members of this House to their seats belonged to the Committee of Elections.

The objection to what is called double pay, ap-

pears to arise from an inattention to the language of the law on this subject. The law fixing the compensation of members of the Legislature does not say a word about travel; the words are: "Each Senator shall be entitled to receive six dollars for every day he shall attend the Senate, and shall also be allowed, at the commencement and end of every such session or meeting, six dollars for every twenty miles of the estimated distance, by the most usual road, from his place of residence to the seat of Congress." The same expressions are used with respect to the members of the House, changing only the names. When a member, then, takes his seat in the Senate, he is entitled to his six dollars for every twenty miles of the estimated distance from his place of residence, let him come from what employment he may. It would, therefore, have been a mere affectation in either of the Senators to have refused this allowance, because in one case they had been engaged in the House of Representatives, and in the other, the gentleman had been employed in transacting business for the War Department. I am, therefore, inclined to believe that the decision in the Senate, which settled this allowance, was correct. I have not mentioned either of these cases with the remotest view of censuring the gentlemen who have been named, but finding a strong similarity existing between them and that of Mr. Tracy, I was compelled to refer to them to show a corresponding practice under the present Administration with that which has been so severely censured by the committee.

I have already mentioned that the case of Mr. Dawson was before the committee, and I will now state that the minority, seeing the strong similarity of his case with that of Mr. Tracy in one important feature, urged to include it in the report, but the majority, by the usual decision, rejected the proposition.

I might go into an examination of every part of the report, but at this late hour, and at the close of the session, I shall scarcely be excused for saying more than is absolutely necessary to explain my motion, and this I trust has already been done.

I have said that the report is erroneous both in facts and in inferences. By the erroneous statement of facts, I principally mean that the facts are not fully stated; that those facts are generally omitted which would most strongly repel the censures which the committee have bestowed upon the former Administration and upon individuals; and I have been always taught that partial statements are misstatements, and that the suppression of truths necessary to be known is as erroneous as the uttering of falsehood. I repeat again, that I have not the smallest intention of charging the committee with drawing up intentionally a partial or erroneous report, but such I think, and trust I have proved it to be, and I must expect from the candor of the committee, when they review their own work, they will unite with me, in the motion for recommitment.

There is one consideration, attending this transaction, which has been already alluded to, and

which ought to impress itself strongly on the House; it is the division under which this report was made. Is it possible, that gentlemen can believe, that a report attended with such circumstances, and so many objections, can be respected? Will it not be considered as the result of party violence, and calculated to agitate the public mind, rather than to elucidate any salutary truths? But I will not enlarge upon these topics; I have in some measure explained my motion, and submit it to the House.

Mr. NICHOLSON had very little inclination, at this time, to enter into an explanation of this subject, which had been so misunderstood by the gentleman just up, on account of indisposition, nor was he very anxiously opposed to the recommitment, but he could perceive not a shadow of reason why the report should be recommitment.

The gentleman had grounded his motion upon the opinion, that all the necessary facts had not been stated. It was, to be sure, a very late period of the session, and the discussion would therefore consume much precious time; but notwithstanding that, if it should appear that any material facts had been suppressed, there would be good ground for recommitting the report. He should therefore think it necessary to test the grounds advanced, to prove the necessity of the recommitment.

1. It was first stated in favor of the motion, that the expense attending the removal of the Government was a duly authorized expense, because it had been passed by the accounting officers of the Treasury. But the real question is, were those accounting officers authorized to pass this account? In the examination of this question, the committee referred to the act of 1790, section six, in which are these words: "And all offices attached to the said seat of Government, shall accordingly be removed thereunto (Washington) by their respective holders." The question which occupied the committee was, what expense this act was intended to cover. In recurring to the documents, the committee found that \$15,000 and odd was paid for removing the furniture of the offices, &c. This the committee did not think an unauthorized expense, because the law empowered it. The books, furniture, records, papers, &c., of the officers, and of the President, they thought the law authorized the removal of; but the committee could see no authority for paying \$32,000 for the removal of the heads of departments, their furniture, their clerks and their families and furniture; they could see no reason, for paying to the clerks, &c. for their broken glass, and china, their tavern expenses, and what is called their dead house-rent in Philadelphia. The committee saw no reason, for saying these accounts were passed at the offices of the accounting officers, because it must be well known, that no account could be paid until it had been so passed. The only question which occupied the committee, was, to inquire whether the money so paid was duly authorized. Whether, for instance, one officer for breaking a looking-glass—another a piece of china, &c.—another to receive his house rent—another

get his expenses paid, to come here to look after a house, and his tavern expenses while here, were the expenses within the meaning of the law above quoted? Facts of these kinds appearing to the view of the committee, they were bound to express an opinion upon them, for they did not think the accounts were legally passed. The law merely authorized the necessary expense for removing the public offices; it did not authorize the Secretary of the Treasury to be paid five hundred dollars for the removal of his family and furniture, nor the Secretary at War seven hundred dollars. Several others also received as much as five hundred dollars, and thence, from the heads of the departments, down to the clerks, to fifty dollars. The committee did not mean to implicate the characters of these gentlemen for receiving the public money, but they considered it their duty to disclose facts, and to declare that they did not believe the expenditure legally authorized.

The second observation the gentleman made was, from that part of the report which states that an unsettled balance of four millions in the War Department, and of three millions in the Navy Department, remains. He says it was the duty of the committee to have stated, that almost the whole of those sums had been received, although unsettled. If the House will examine the documents accompanying this report, they will find that the sums paid into the Treasury from this large sum, have actually been passed to the credit of the departments. This the committee thought sufficient, because any man who would give himself the trouble to examine, would find that much has been settled. But the committee could not say with precision how much, because the period of the session was such as to prevent them from passing through such voluminous accounts. It would have been an extremely laborious and tedious undertaking, and therefore the committee were obliged to report briefly. The committee could not examine particularly into the items, nor form any comparison whereby to prove their accuracy or inaccuracy; they were obliged to take it for granted that those things were all right. They reported agreeably to the mode of doing business in the Treasury Department. Until the account of any individual is finally closed, let him be indebted ever so little, he is considered, in the Treasury books, a debtor for the whole of the account. In this way the committee reported, and accompanied the document with marginal notes, exhibiting where the accounts have been rendered and partially settled.

As to the navy yards, the committee having been appointed "to report whether moneys drawn from the Treasury, have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for;" and knowing that six navy yards had been purchased, very naturally inquired under what authority these purchases had been made, and how they were paid for. They referred to the law authorizing the building of six seventy-fours and six sloops of war. The committee submitted an inquiry to the former Secretary of the Navy, (Mr.

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

Stoddert,) directing him to inform the committee as to the purchase. Mr. Stoddert answered, that a law had passed, appropriating one million of dollars for building the seventy-fours and sloops of war, and that fifty thousand dollars were also appropriated for two dock yards; and also that two hundred thousand dollars were appropriated for the purchase of timber, or land clothed therewith; and that he thought himself authorized to purchase six navy yards, wherein to build the seventy-fours. To these several laws the committee referred for the authority under which the Secretary acted, but they could find no such authority; they could find no other, than authority to purchase two dock yards, wherein to repair the ships. Now, although not stated in the report, there is very good reason to believe that the fifty thousand dollars never was laid out upon the two dock yards, but that this sum was cast into the surplus fund. Whether Mr. Stoddert's opinion was correct or not, that it would be more economical to build the seventy-fours in public yards, than in private yards at rent, the committee were not appointed to inquire; it was their business to say whether he was authorized to act so, let his private opinion be what it might. The committee were clearly of opinion, that he was not authorized to take money appropriated for one purpose and make use of it for another.

As to the reason, why the gentleman wishes the report recommitting; to wit, to insert Mr. Stoddert's answer with the report; it is true a motion for the insertion was made. But the committee thought that letter was addressed to them, and not to the House; that it was to inform their minds, so as to enable them to make the report. They paid due attention to the reasoning of the letter, but it did not convince them that Mr. S. acted authoritatively. Mr. Stoddert's reasoning upon the subject could not form a part of the report; the committee were called upon to form an opinion, and not to substitute that of any individual. They were to inquire whether moneys appropriated were used to the purposes for which they were appropriated. They thought it was not, because it was appropriated to build ships, and to purchase land with timber on it, or timber alone. The question then is, whether six navy yards are six seventy-four gun ships, and whether six sloops-of-war are lands with timber growing on it or not? If Mr. Stoddert's reasoning had been adopted by the committee, it would have become their reasoning, and except it should be theirs, it would have had no business in the report. If a disposition of vindication could have been admitted, Mr. Stoddert might have been permitted to have appeared with counsel before the committee, but facts alone were required, and facts the committee state. Ships had been built for the public before, but the idea never was entertained to build docks for them. No measure different from those taken in the building of the frigates, except by legal authority, ought to have been taken with the seventy-fours.

The military arsenal at Philadelphia, the gentleman said, was built to keep the stores in with

more safety, than they could be kept in private stores, in the neighborhood of which frequently fires occurred. All this might be truth, but if these were facts, Mr. Nicholson would ask, why were not Congress applied to, to say whether they would take the risk, or whether build stores, for the more safe deposit of the public stores? But the money which built this military arsenal or laboratory, (more properly,) he believed it would be found was taken from the Quartermaster's department. Now, was it ever thought, that this fund should supply resources to build a laboratory? Was the Quartermaster's department ever appropriated to, for other than the purposes expressed or intended? No laboratory can be built, but by the authority of the State where erected; but where is the State authority, or where the appropriated fund for this purpose? Upon examination, the committee could see no authority to appropriate or apply public money for this purpose, and yet they found that one hundred and thirty-five thousand dollars were taken from the Quartermaster's department for this military arsenal! The committee could see no authority for the expense, and that fact they have stated.

As to the resignation of Mr. McHenry, whether voluntary or at the request of the President, the committee saw no reason why the Government should provide the house for Mr. McHenry at Georgetown. It might be supposed that neither that officer, nor his friends, would have thanked the committee for reporting any reasons, which might have caused his removal from office:—they had nothing to do with it, having no document upon the subject.

The account of Mr. Tracy is next vindicated, and all the gentleman appears to regret here is, that Mr. Dawson's account is not inserted in the report. One general answer might be given to this. It was believed by a majority of the committee, that Mr. Tracy did receive money from the Treasury improperly, but it never has been suggested that Mr. Dawson did so, and therefore there is no comparison of the cases. Nay, it was said by the gentleman himself, (Mr. Griswold,) that he did not blame Mr. Dawson. The committee saw a most material distinction in the cases. At the time of Mr. Tracy's appointment, he was a member of the Senate of the United States. At the time of Mr. Dawson's appointment, he was a member of neither branch. Mr. Dawson received his warrant of appointment some time in March, but he was not elected to fill a seat in this House till the end of April, and then he was on his mission. His functions of member of Congress had ceased before his appointment, and his appointment took place before his re-election. Again, Mr. Dawson received no pay after some time in October last, which was some months before the sitting of the House. On the contrary, Mr. Tracy received his pay of officer, or agent, or whatever he was, for seventeen days after the sitting of the Senate; so that he was paid as a member of the Senate, and as an officer at the same time. The committee could not discover the cases as parallel to each other, and therefore did not insert the

H. OF R.

Disbursement of Public Moneys

MAY, 1802.

case of Mr. Dawson, which was moved by the minority.

Several other cases were also mentioned—those of Mr. Sheafe, Mr. Muhlenberg, and Mr. Stone; but whether they were as represented or not, they were not brought into the view of the committee; otherwise there would have been an inquiry.

Mr. GRISWOLD.—I did not mention the case of General Muhlenberg, nor did I charge the other gentlemen with improper conduct: I believe they were strictly warranted to act as they did. I merely stated the reference for the purpose of showing that Mr. Tracy was entitled to the compensation he received for travel, as well as the others, because it has been a long-standing rule of the Senate to allow the travel in such cases. It is not our province, therefore, to object to it. Respecting the decision of the Senate, I wish not to oppose it. And being no uncommon case, there is no necessity to bring up that of Mr. Tracy, whom I consider entitled to his travel, both as an agent and as a Senator.

Mr. NICHOLSON observed, that not being brought before the committee, and he not having heard of the case till this day, it could not be a reason why the report should be recommitted.

The case of the navy yard at this place was brought before the committee. It was the request of the minority that the case should be inquired into. The committee sent to request the Secretary of the Navy to say by what authority the storehouse had been erected here, or from what fund it was paid. The answer was, that the storehouse had been erected out of a fund granted in February, eighteen hundred and one, for completing the seventy-fours, the navy yards, and the docks. The ships had been ordered to be laid up in ordinary at this place, and the navy yard purchased. When the present Secretary of the Navy came into office, he found, that as a navy yard was to be completed here, and as sails, rigging, and other naval stores, must be kept here; and finding that one storehouse was already built, and another begun, here, it would be most prudent to complete that storehouse, as a necessary appendage to a navy yard where shipping would be sent for repairs. To this none of the gentlemen objected, but rather approved; and this is surely a purpose to which the money was appropriated. Whether the other applications are or not, is for the House to decide. The committee have stated the facts.

Mr. DAWSON said, he did not rise to answer the gentleman from Connecticut, (Mr. GRISWOLD,) because he thought that had been ably done by the gentleman last up, and because his observations did not command that respect; but he rose to prevent any improper impression, which the misrepresentations of that gentleman might possibly make respecting himself. The gentleman stated that a member of this House was appointed to an official station on a foreign mission. As stated by the gentleman from Maryland, I did receive the appointment some time last March, said Mr. D. During my absence, the people of my district elected me a member of this House. Some time in October my business was closed. I arrived here

some time in January, but did not receive salary as a member till some days after my arrival, and till I had taken my seat. This is well known to that and every other gentleman. Every gentleman must also know, that I could not be a member of this House until I took my seat, and therefore I could not have been appointed to, or held my seat, while exercising the business of the nation abroad. I must therefore say, that unless the other observations of the gentleman (Mr. GRISWOLD) are better founded than his relation of facts, they deserve very little credit indeed.

Mr. R. WILLIAMS always thought that a motion to recommit a report was grounded upon the insufficiency of that report as to facts. But he had hearkened with much attention, and had not discovered any arguments built on a misstatement of facts. If no facts are misstated, then the motion must necessarily fall. That the committee have not given a full and ample report upon the account, is admitted in the report; they say that the business was of such a nature, that it was not in their power, during their limited period, to do it. It was not uncommon, or contrary to rule, for committees to report in part, and this might be taken as a report in part. Did the gentleman mean to say, that no report ought to have been made, till all the subjects upon which the committee might have turned their attention had been fully examined? The committee have said, that there are many things which they should have investigated if they had had time. It is not certain, for instance, to what length the construction of the laws have been carried. The gentleman has said, that a certain construction has been put upon laws making certain appropriations, and this House has nothing to do with it. With this we cannot agree as a Legislative body, because if this length can be admitted, anything can. However men might differ in committees, it is for the House to determine on the facts stated in their report. Here the committee have reported certain facts: they have brought into view the uses to which certain appropriations were applied, to support which they have produced documents, so far as they were able. It is for the House, upon a view of these facts, to say whether or not the moneys have been applied to their proper uses, as directed by law. Upon this single point, he thought the question turned, whether or not these facts were misstated; if not, there could be no ground for a recommitment.

Mr. BAYARD.—I flatter myself, though perhaps vainly, if this report be recommitted, it will assume a very different shape, both in form and substance, upon its appearance at a subsequent session. The report, though the long work of near half a year, is extremely immature and incomplete. Having been a member of the committee, although of the minority, I have a right to suppose myself acquainted with its proceedings. It was impossible, from the course pursued, for the committee to have any correct knowledge, or certain opinion, as to the results which compose their report. We had no time to compare them with the details contained in the documents transmitted to us from the offices, and from which they were derived.

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

Gentlemen may consider me, if they please, as speaking only of the minority of the committee, for I can speak with certainty only in relation to them. Though the committee existed for more than four months, the report which has been made was not the subject of consideration half the number of days. We had notice one evening to meet the next morning at ten o'clock to receive the report of the committee. I was astonished. The committee had directed no report to be drawn up, they had agreed to no fact, nor resolved upon any principle. We were summoned to meet at the hour to which the House was adjourned, and of consequence had no more time for our deliberation, than the period of grace, between the nominal hour of adjournment and the actual time of the House being called to order. The report was produced and once read. There was not time to compare the statements made with the documents referred to. Our opinions were immediately called for upon the report, as the intention was to present it that morning to the House. Upon a great part of the report, it was impossible for some of us to form so hasty an opinion; but there were some things obviously exceptionable. I shall not be considered as finding fault with the chairman of the committee—I presume he considered himself as conforming to the ordinary course of proceeding. Some of the exceptions which occurred to us, upon the cursory reading of the report, were stated. I will not say that a word was not corrected, but no material change was suffered. Observing that the official conduct of Mr. Stoddert was deeply implicated in the report, we urged that common justice required, that as Mr. S. was on the spot, that we should hear his defence, before we passed our judgments upon his acts. Upon this point the minority was joined by the chairman, and a letter was in consequence addressed to the late Secretary, requesting him to explain the grounds from which the authority was derived to make several disbursements. He was allowed till next morning to furnish an answer to the committee. At our meeting the ensuing day, Mr. Stoddert's answer was received. He had been manifestly hurried, but to the minority of the committee the answer was entirely satisfactory. We endeavored to vary the report accordingly, or at least to have the Secretary's letter annexed, and referred to among the documents. The attempts however were overruled. It occurred to us at this time, that we were bound to observe at least the same appearance of justice in relation to Mr. Tracy, whose conduct was the subject of our animadversion, which had been shown in respect to Mr. Stoddert.

It was therefore insisted, before the report was made, that Mr. Tracy should be allowed an opportunity of explanation. The chairman so far complied with the wish of the minority, as to agree that the report should be shown by a member of the committee to Mr. Tracy, and his answer waited for till the next morning. Upon the third day we made an effort to introduce into the report several cases, which had occurred under the present Administration, which the minority considered as

standing upon the same ground with acts of the former Administration, which were condemned in the report. The effort was vain. The cases we referred to were distinguished by the vote of the majority from those which were stated. After one or two small amendments, the report was offered for our agreement, and adopted by four against three. The same morning the chairman presented it to the House.

I have made this statement in order that the House may be acquainted with the ground upon which I undertook to assert that the report was immature.

It was impossible, in the time allowed us, to weigh the evidence of facts, to consider the soundness of principles, or to examine the correctness of statements contained in the report. It will be perceived by those who are accustomed to the forms of proceeding upon committees, that our course has been entirely novel. It was usual heretofore for a committee to agree upon the substance of their report, and then to instruct their chairman to draw up a report in conformity to their opinion. In the present instance our opinions had not been asked, upon any point embraced by the report, before it was offered to us in its complete form.

If the points and cases which the report contains had been separately brought under discussion, they would have been more fully investigated and considered, and the result might, in consequence, possibly have been varied. As it regarded myself, this new mode of proceeding was a complete surprise. I had concluded, from everything which fell under my observation, that the intention of making a report was entirely abandoned. This inference was drawn from the small impression which had ever been observable from any discovery which the committee had made, as well as from the omission of any consultation which usually had been preparatory to a report. It would have been difficult for any of those to have conceived that such a report would have been made, who had never previously, from any one member of the committee, heard that any act of the Administration had been discovered worthy of being made the subject of our censorial power.

I see it stated in the report, that from the year seventeen hundred and ninety-seven to the year eighteen hundred and one, inclusive, a sum was advanced by the Treasury, chargeable to the War Department, exceeding ten millions of dollars, of which upwards of three millions remains unsettled or unaccounted for. And that from the year seventeen hundred and ninety-eight to eighteen hundred and one, a sum exceeding nine millions has been advanced on account of the Navy Department, and a balance unaccounted for, or unsettled, of more than four millions now remains. This statement may be warranted by the mere form in which the balances were transmitted to us, but is calculated to make the most erroneous impression. When the document containing the balances was sent to us, no one supposed it to afford any light, as to the objects of our investigation, or to furnish any complete information, upon which

H. OF R.

Disbursement of Public Moneys.

MAY, 1802.

an opinion could be formed as to the money due to the United States. The face of the document itself, attests, that of the sums stated to be unsettled, the greater part had in fact been accounted for, and the formal closing of the accounts not having been considered very important either to the Government or to the individuals, they have remained open from the most trivial impediments. It would seem, from the mode in which these balances are sustained, that if one hundred thousand dollars have been advanced on a contract and ninety-nine thousand nine hundred and ninety-nine have been accounted for, yet the whole balance will appear to be due, till a voucher is produced for the last dollar. It appears also, in the face of the document, that balances are in some instances stated due to the United States, where it is manifest that the sum stated as a balance was a payment of a debt due from the Government. Many of the items, are money paid to the officers of the Army and Navy on their account of pay and subsistence, where the money was due for services. Nay, there are cases where money has been advanced on account, and afterwards, upon the inspection of the vouchers, the balance ascertained and paid, and yet, from the account not being formally closed, the whole sum appears and is reckoned among the balances due to the United States.

More than four millions are stated as unsettled balances upon the transactions of the Navy Department. I remember well, when we were in the office of the accountant of that department, the accountant stated it as his opinion, that the Treasury was not in advance for the department more than five hundred thousand; and that from his knowledge of those advances, he did not think the United States would lose ten thousand dollars, upon all the transactions of the department. I was struck with the information, knowing that the contracts of the Government are formed and executed by advances, and considering that ten thousand could be deemed but a very small loss upon an expenditure of ten millions of dollars. I considered it as an example of skill, vigilance, and success in the management of the public affairs, that is rarely afforded even in the conduct of private concerns. What has been remarked with respect to the Navy, equally applies to the War Department.

The aggregate balance of near four millions, stated as unsettled or unaccounted for, in the report, is composed of items, which, explained by the notes annexed to them, appear chiefly to be accounted for, to the satisfaction of the War Department. One item, which enters into the general balance, is a sum exceeding eight hundred and eighty thousand dollars. It appears that General Wilkins has furnished vouchers for the whole amount of the advances made to him, but has not furnished accounts for a small quantity of public property sold on the Ohio, (I believe some boats,) and therefore the account is not closed, and the whole amount ever advanced to him is computed among the unsettled balances. I understood the accountant was satisfied with General Wilkins's accounts.

Mr. NICHOLSON—The gentleman says the accountant of the War Department was satisfied

with the accounts of General Wilkins. I did not understand the fact so—vouchers were sent on, but they were not satisfactory.

Mr. BAYARD.—I know not that there was complete satisfaction, as to the manner of each disbursement, but I mean, that it sufficiently appeared that the money had been expended on the public account. Thus an unsettled account, probably less in amount than two thousand dollars, gives the appearance of a balance unaccounted for, exceeding eight hundred and eighty thousand dollars. There are numerous instances of the same kind. In the list of balances, is the sum of one hundred and twenty-two thousand dollars, charged against Captain Vance; and it is stated, in the annexed note, that it appears that the whole sum has been duly applied. So against B. Williamson is charged a sum exceeding two hundred and thirty-five thousand dollars, though it is stated that he has furnished accounts of the application of the whole sum. It is needless to cite other instances of a similar kind; those which have been shown must convince the whole House that the report is not explicit, and is extremely exposed to a false interpretation. The objection to this part of the report furnishes the strongest ground for a recommitment. It certainly cannot be the design to raise a belief, that millions of the public money remain unaccounted for, when the documents from which all our knowledge is derived show that a very small sum remains unaccounted for; and when I undertake to say, that the evidence before us is not sufficient to prove that there is a dollar due to the United States. Can it be the interest of any party in the nation, or of any member upon this floor, to destroy the public confidence in the general administration of the Government? Let the peculiar honesty of one Administration be suspected, and their successors will soon sink under the same odious suspicion. On such a subject, we should banish our partialities and antipathies, not merely as a sacrifice which belongs to justice, but as an act required by a great national and common interest. I acknowledge that this part of the report will be harmless in the hands of those who will read, and are able to understand the documents on which it is founded. But the bulk of the document will probably exclude it from the public papers, and the great number of persons who read the report will read it without explanation. The probability, therefore, of the report creating false impressions, of a nature extremely derogatory from the honor of the Government, would alone be a sufficient motive with me to vote in favor of the motion to recommit.

There are many other grounds upon which I consider the report exceptionable. It is not however my intention at this late hour (six o'clock) to enter into all the details of the report. My observations will be confined to a few prominent and important points, upon which the different members of the committee held very opposite opinions. I had no knowledge of the resolution of my friend from Connecticut (Mr. GRISWOLD) to submit the motion on the table, before the meeting of the House this morning, and am therefore the more

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

gratified that the honorable mover has taken so comprehensive a view of the subject, as to render it totally unnecessary for me to go over the whole ground.

I shall beg the indulgence only of a few words, upon one or two heads, respecting which the opinion I entertain is decidedly opposed to that expressed by a majority of the committee. I cannot well conceive of a plainer mistake, than what appears in the opinion, pronounced on the purchase of six navy yards, made by the late Secretary of the Navy. The committee, I think, ought to be allowed an opportunity of reviewing that opinion. Four of those six yards are considered as purchased without authority, and the money paid for them misapplied.

By the act of the Legislature, of February 1799, the Secretary of the Navy was directed to cause to be built six ships, each to carry not less than seventy-four guns; and six sloops-of-war of eighteen guns. For this purpose, a million of dollars was appropriated; two hundred thousand were appropriated to the purchase of land, bearing timber suitable for the Navy, and fifty thousand dollars for the making of two docks. These laws, passed on successive days, indicated the design of a permanent Navy Establishment. It was perfectly understood that the ships of the line were not directed to be built for the occasional defence of the country at that period, but were intended as the commencement of a lasting system of defence, which was expected to increase with the growth of the commerce and resources of the country. It was far from our expectation that the Navy of the United States was to be limited to six ships of the line, or to any number within the convenient means of the country, short of a force adequate to render our flag respectable and our navigation secure. It was not supposed that the seventy-fours would be launched for several years, but we had hopes when they left the stocks, a flourishing commerce would enable us to lay the keels of new ships in their places. Under this view were the two hundred thousand dollars appropriated, to the purchase of land producing timber fit for a navy. With this knowledge, so plainly derivable from the policy pursued by the Legislature, what was the Secretary of the Navy to do? It was made his duty to build six seventy-fours and six sloops-of-war. It is surely not expected that they were to be built on the water or in the air, and of consequence it will be allowed that he had authority to provide yards, for the purpose of constructing them. The public had no yards, and it was therefore necessary to obtain ground from individuals. As there were no persons disposed to make charitable grants, it remained only for the United States to purchase ground in fee simple, or for a term of years, paying a gross sum or an annual rent. The act of Congress, directing the ships to be built, appropriated not a dollar either for the renting or for the purchase of land. But a million of dollars were appropriated to the building of the ships, which was directed to be done, but which could not be done without an expenditure for land. Can there be a plainer proposition, than that an appropriation for a certain service embraces every article

without which the service cannot be performed? In the present instance, the service imposed upon the Secretary could not be performed without obtaining navy yards at the public expense. It therefore rested in his discretion, for the faithful exercise of which he was accountable to the Government, either to purchase or rent the ground, necessary for the yards. It was his duty to conform to the views of the Legislature, and to make such an arrangement as would be most advantageous to the public. If it answered the object, and was most for the interest of the Government to rent, then surely he ought to have rented; but if it comported more with their views, or was more to their benefit to purchase, it was then his duty to purchase.

This inquiry, however, was never made by the committee. They never asked the question whether it was cheaper to buy or to rent, and they have condemned the Secretary for buying and not renting, when he had no more authority to rent than to buy, and when by buying he has probably saved to the United States several hundred thousand dollars. The situation of this officer is peculiarly hard. Having been directed to build a number of ships for the public service, he has purchased navy yards for the purpose, and in consequence has subjected himself to the accusation of expending public money without authority. If he had rented land for the purpose, he would have been equally liable to the same reproach; and if he had neglected to do either, he would have been exposed to an impeachment. The Secretary has it fully in his power to show, that his purchases will save a large sum of money to the United States. A navy yard, for a seventy-four, cannot be prepared without great expense. Under this head, I am informed by the Secretary, that one hundred thousand dollars were expended on one frigate, the *Constellation*. This was occasioned in a great degree by leasing the yard. At the expiration of the lease, the public lose the benefit of all their expense in preparing and improving the ground.

In addition to the inference which the Secretary might fairly make, of an authority to purchase ground for the navy yards, if a purchase could be made on cheaper terms than a contract of lease, he had further to consider the intention, plainly manifested by the Legislature, of establishing a system which would require the use of these navy yards at a future time, beyond the duration of any common lease. Nay, he knew not what time was to be consumed in building the ships directed, and of course could not know for what term a contract could be made. At present, if the Government should be disposed to sell the ships on the stocks, they have the power to sell the navy yards, and they will have the same power when the ships are launched; and they may thus convert in effect the permanent purchase into a term for years, and restore to the Treasury the money which has been expended. But, sir, what I consider as the hardest act on the part of the majority of the committee, was their refusal to suffer the answer of the Secretary to the letter we addressed

H. OF R.

Disbursement of Public Moneys.

MAY, 1802.

to him, explaining the grounds of his conduct, to accompany the documents annexed to the report. We have been told by the gentleman from Maryland (Mr. NICHOLSON) that it was not the business of the committee to report the opinions of the Secretary, or of any other individual. If this be correct, I believe it was as little the business of the committee to report their own opinions. They should have confined themselves to the statement of facts, and upon those facts have left the House and the nation at large to form their own opinions.

If this course had been pursued there would have been little occasion to publish the reasoning of Mr. Stoddert; but, as the opinion of the committee is merely their inference from certain premises, it was due to the public, as well as to the Secretary, that the grounds should be explained which had led him to a different conclusion from that adopted by the committee. This report seems, at present, intended only for public information; certainly I must believe to give correct information. The letter of Mr. Stoddert throws great light upon a part of it, and when our object is only to inform the people on a subject, why should we refuse any light which places it more clearly before their eyes?

I shall be allowed to say a few words in relation to the case of Mr. Tracy. I am not satisfied with the opinion or the conduct of the committee in relation to it. The service rendered by Mr. T. was not incompatible with his appointment of Senator. He was employed to visit the posts on the frontiers, and to collect for the Government all the material information respecting them. This was a very delicate, confidential, and difficult service; but the employment constituted no office. It was a simple agency, confined to a single occasion, performed under instructions, but no commission. But, sir, if the case of Mr. Tracy presented anything irregular, some of us conceived that the case of Mr. Dawson, standing on the same ground, ought also to have been stated in the report. The gentleman from Maryland has contended, to-day, that there is a difference between the cases. I am sensible of the difference. The one is the case of Mr. Tracy, the other is the case of Mr. Dawson. I see nothing in it to censure, but still considering it in every material respect the same with that of Mr. Tracy, there was equal reason for making it a part of the report. The chief ground on which it has been attempted to distinguish the cases is, that Mr. T. was a Senator, at the time when he was sent on his mission, and that when Mr. D. was appointed to his, he was not a member of this House. This distinction exists, but I trust I shall be able clearly to show that it is not material. And give me leave here to tell the gentleman from Virginia, (Mr. Dawson,) that in attempting to impeach the credit always due to the statements of my honorable friend from Connecticut, the imputed misstatement arose from his own misapprehension. The gentleman from Connecticut did not mean to state that he was a member of the House at the time of appointment, but that he was a member during

a period that he was rendering service under Executive instructions.

I say, sir, that the cases are not materially distinguished by the circumstance that Mr. D. was not a member at the time of his appointment, because the holding a seat in either of the branches of the Legislature, under no Administration, has been considered as forming an incapacity to receive an Executive appointment. Under the former Administrations, several instances of such appointments occur; and under the present, I need only refer to the case of Mr. Pinckney, who was a member of the Senate at the time of his appointment as Minister to the Court of Madrid. The circumstance, therefore, of being or not being a member of the Legislature at the time of an appointment, is wholly immaterial. A member of the Legislature has an unexceptionable right to receive an Executive appointment, but the question is, whether the acceptance or exercise of an office under the Executive, does not vacate a seat in the Legislature. On this subject, I have no doubt that the acceptance of an office under the Executive, does vacate a seat in the Legislature. But the question still remains, whether the employments of Messrs. Tracy and Dawson are to be considered, under the Constitution, as offices. Upon this point, there cannot be a doubt but that the appointment of Mr. Dawson was as much in the nature of an office as that of Mr. Tracy. It will be remembered, that Mr. Dawson invited his constituents to elect him, proffered his services, and engaged to be at his post, when his duty should require his attendance. He was elected in April, and virtually accepted his place from the time of his election, and yet continued to serve under the Executive, and to receive pay for his services till October following. But, sir, I do not conceive that it belonged to the committee, or that it belongs to this House, to interfere in any degree in the case of Mr. Tracy. The employment of Mr. T. was unquestionably unexceptionable. The only question is, whether the employment did not vacate his seat in the Senate? This question, the Constitutional privilege of the Senate confines to that body, and for us to decide upon it, is an invasion of those privileges. If any thing wrong has been done, which attaches blame, it is by the Senate. With a knowledge of the employment in which Mr. T. had been engaged, they allowed him to retain his seat as a member of their body.

It is stated, that Mr. Tracy received pay for mileage as Senator, while the pay of his agency continued. The compensation for travelling is governed by the law of its own nature. Mileage is due where there is no travelling. An allowance is made to members, which is regulated by the distance of the place of their usual residence from the seat of Government. They are entitled to, independent on their coming from or returning home. When Congress adjourns, a member from Georgia is entitled to his mileage, whether he returns to his State, travels to the North, or remains at the Seat of Government.

It has been the practice in the Senate, when a

MAY, 1802.

Disbursement of Public Moneys.

H. OF R.

member of this House, is appointed to that body, to allow him full mileage, notwithstanding his receiving mileage, for the same travelling, from this House. This happened in the case of Mr. Stone of North Carolina, and Mr. Sheafe of New Hampshire. They were both members of this House, during the last session, and held their seats till the third of March. On the fourth of March, they took their seats in the Senate, which had been called to meet on that day. They received full mileage as members of the respective Houses. Mileage is not a compensation for service, but an indemnification for a supposed expense. A person cannot be a member of the two Houses at the same time, but for the same time he is allowed mileage by each House. If, therefore, the employment of Mr. Tracy were a mere agency, there could be no objection to his receiving his mileage, during the continuance of the agency. The discussion of this subject has been extremely unpleasant to me. It is always unpleasant to have occasion to introduce into debate the names of gentlemen, whose feelings are unavoidably excited and often injured. But considering as a defect in the report, and a reason for recommitment, the statement of a case under the former Administration, and the omission of one precisely similar under the present, I have felt myself justified, as the case of Mr. T. was stated in the report, to state the case of Mr. Dawson in the debate.

I need, sir, say very little relative to the expense attending the erection of the laboratory in the vicinity of Philadelphia. The subject has been well explained by my friend from Connecticut; the building was necessary for the preservation of the arms and stores of the United States, and the expense was therefore properly defrayed out of the appropriations for the Quartermaster's department.

The gentleman from Maryland, in justifying the erection of stores at Washington, has furnished ample authority for the erection of the buildings near Philadelphia. The public stores lately built here, are paid for out of an appropriation for making a wharf. The gentleman, however, has contended that the articles of naval equipment could not be preserved, without the covering and protection of stores, and thence he infers an authority to erect them. I am not disposed to question the soundness of the argument, but it applies with equal force in vindication of the expense incurred in erecting the stores, or the laboratory, as it has been called, which is the subject of animadversion in the report. We contended, on the committee, that the case of the stores erected in this city, ought also to be stated in the report, on the same ground with that of the laboratory, but distinctions satisfactory to the mind of the majority excluded it.

I ask pardon for having detained the House so long at this late hour. The subject is of considerable importance, and I confess I have felt not a little anxiety, to prevent a false impression being made by the report upon some points. I see no reason, which I had the means of explaining, why gentlemen should not agree to recommit-

ment. It is not proposed to act upon the report this session. The committee confess their task is very imperfectly executed. Why send out such an unfinished work to the world? Subject it to the labor of another session. Five months were scarcely sufficient to enable the committee to unfold the papers, which they were assigned to examine. In five years they could acquire but an imperfect knowledge of the several accounts on the files of the different offices. Upon a vast subject our time has been occupied with very small details. We have looked into half a dozen accounts, and discovered a few questionable expenditures. But as to the application of the millions, drawn from the Treasury, for the service of the different departments, it is still covered with the dust of the offices.

I must confess that, according to my view, a committee is altogether inadequate to the task assigned to the Committee of Investigation. In my opinion, the business belongs to the Secretary of the Treasury, or, if you distrust him, create a standing commission, with powers equal to the object. We were charged to examine into the accounts of all the public money, which had ever been drawn from the Treasury. Our duty confines us the greater part of the day to the floor of this House. How was it possible for a committee of seven, having everything to learn, with the fragments of their hours, to accomplish an object, which would require the regular work of years? I conceive the subject, if gentlemen have serious impressions with respect to it, should be sent to the Secretary of the Treasury. He has already more knowledge relative to it, than a committee would acquire during a whole Congress; and if any important discoveries are to be made, it may safely be trusted that he will bring them to light.

Mr. NICHOLSON said he rose again on this subject, merely to answer the observations of the gentleman who had spoken of the manner in which business had been done in that committee. He (Mr. BAYARD) said it was usual to direct the chairman of committees in what way the report was to be made, and presented for acceptance. Having very little of this kind of business to do, Mr. N. said he was not very conversant in the precise manner, but he thought it was usual for the chairman to make propositions to the committee, to call forth their attention. He knew of no way to facilitate business so much, as by bringing in a sketch of a report, comprehending the principal features which the papers before that committee exhibited. This he did on the ninth of April: other business prevented it being done sooner. The length of the report, comprehending all the principles exhibited to view, and including the balances therein drawn, and afterwards copying it, took a considerable length of time. Being then presented to the committee as mere propositions, which they might strike out or amend at pleasure, (which was last Tuesday,) it was resolved to apply to Mr. Stoddert for his answer to that part of the report concerning him. That was done. It was afterwards proposed that Mr. Stoddert's

answer should become a part of the report. This was overruled. A new proposition was then made, that Mr. Dawson's case should be made a part of the report. This the majority thought improper also. Proposition was then made that Mr. Tracy should be heard. A letter written by the gentleman from Delaware to him, for that purpose, was handed to the chairman to sign, but another gentleman thought it better to wait on Mr. Tracy in person. This was agreed to with some amendment. The report was then postponed till the subsequent day, to hear what Mr. Tracy might say. The committee then met at nine o'clock and waited till twelve, but Mr. Tracy did not come; the report was therefore made up without hearing him. These facts he had thought proper to state, that the House might exonerate the committee from having done wrong.

Mr. RANDOLPH said his illness, and the length of the sitting, rendered him too fatigued to proceed far in the investigation of the observations of the gentleman from Delaware, but he felt one observation so strongly merited reply, that he could not abstain from rising; he meant the particular wherein Mr. Dawson and Mr. Tracy were paralleled. He says, the difference is only in the name of the parties, but he has failed to prove this similarity. The difference is so palpable that no man can fail to perceive the dissimilarity (with the exception, I must say, of the gentleman from Delaware.) Mr. Tracy was a member of the Senate of the United States, when he received his appointment. That he was blameable for taking, or precluded from accepting it, no one will say; unless it can be proved to have been an office, created while he was a member of the Senate. But this was not the case with Mr. Dawson. Mr. Tracy being a member of the Senate, I will say that his constituents had no power whatever to revoke their confidence in him, because he did not return to their suffrages. The other gentleman was a private citizen, and the act of placing confidence in him, obtained after his appointment and during his absence on the mission. This was an act for which he was not responsible to any man upon earth, and, therefore, it does not belong to this House. Another distinction in the cases is, that Mr. Tracy accepted an emolument for services rendered, at the same identical time that he was receiving his mileage as a Senator. He certainly, therefore, received double pay for his services. If Mr. Dawson had received his pay as Member of Congress, and his compensation for his mission to France at the same period, the cases would have been so far similar. But it was not so, for his foreign mission ceased long before the House sat. Mr. Tracy received emolument at that time, for an office which he could not and did not fill; and which, if he had filled, was totally incompatible with the office of Senator. This is a true distinction between the cases. The question whether a person holding an office under the Government is eligible to a seat in this House, might easily have been determined by the gentleman, and the question whether Mr. Dawson was eligible to his seat, might also have been de-

termined by him; because Mr. Dawson, submitting to the House, when he took his seat, whether or no it was proper, was publicly invited, because it was considered that a foreign mission was an exceptional case; and for this reason, because the person is elected by the people, when, from the nature of the case, he must be ignorant of his having been the depositary of their confidence. If, therefore, there is any objection, that objection is removed by this necessary event. But the case of Mr. Tracy is totally different: he not only received and held two commissions at the same time, but he also received the double emoluments.

With respect to the double allowance for travel, the cases of the two gentlemen were mentioned in the Senate as parallels. I will remark that this is a case that does not come before this House, and we are told that it was not offered to the Committee. Indeed, how can we act at all upon the informal, unofficial, and unfounded statements of the gentleman who preceded me? Indeed I should lament if this were a fact: my knowledge of, and acquaintance with one of the gentlemen spoken of, (Mr. Stone,) is such, that to parallel it with the case of Mr. Tracy, would make me lament exceedingly. Indeed I cannot conceive, how they could besaid to receive double compensation: they received their full pay for their services in this House, till the fourth of March; they went into the Senate chamber under a new appointment, but they did not in any way hold at the same time two distinct offices, or receive emoluments in that view. I do not mean, however, to defend the usage of the Senate in that particular, because though I cannot call it corrupt, I must call it an abuse; but being an usage it was received.

Another parallel mentioned, was that of building stores on the public grounds in this city, and the military arsenal or laboratory at Philadelphia. Now it appears to me, that you cannot very easily define the term "navy yard," without these appurtenances to preserve the materials in. But there is a material distinction, between building on ground where we have the right of soil and jurisdiction, and building upon the ground of others. Of what importance is it to dwell on these cases, in order to prove that it is unnecessary to recommit the report? It amounts to nothing, but that different officers of the Government have put different constructions on the same law. Does this invalidate the report or the reasoning of the committee? Does it disprove the facts stated, or invalidate the charges exhibited against A or B? The gentleman really reminded me of the exertions of a counsellor defending a criminal at the bar of justice. But I would ask, does it diminish the crime of A or B, that C and D have committed the like crimes? This is a strange mode of defence, though not unusually offered.

Upon the whole, as the lateness of the hour nor my strength will admit of enlargement, I would observe that the committee were appointed to make certain inquiries; they have reported upon those inquiries, and now you are to be told that because different authorities have put different constructions upon the law, the report must be re-

May, 1802.

Amendments to the Constitution.

H. OF R.

committed! Sir, this will be no way ever to discover and bring to light improper conduct; we did not wish to know their construction. The committee have reported in a manner and temper highly honorable to them, and I trust we shall not offer to give a kind of counter report, by sending it back to them, when there is no reason for that measure. This will be giving a color to transactions whose illegality is evident. I see no force in any argument used in favor of the motion.

Mr. GRISWOLD read, without comment, a certificate from the Secretary of the Senate, that Mr. Stone and Mr. Sheafe did receive their mileage from the Senate, for their coming and return to attend the Senate, on the fourth of March.

The question was then taken on the motion to recommit the report, and negatived—yeas 22, nays 46, as follows:

YEAS—James A. Bayard, Thos Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, Nathan Read, Wm. Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanael Bishop, Richard Brent, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Wm. Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

AMENDMENTS TO THE CONSTITUTION.

Mr. VAN CORTLANDT moved that the House do now, according to the standing order of the day, resolve itself into a Committee of the whole House on the state of the Union, to take into consideration a motion referred to them on the nineteenth of February last, in the form of a concurrent resolution of the two Houses, proposing two articles of amendment to the Constitution of the United States respecting the election of President and Vice President; to which committee were also referred certain resolutions of the Legislature of the State of New York, to the same effect.

Mr. HUGER thought the gentleman from New York could not be serious. He held it a bad precedent at that late period of the session to attempt to alter the Constitution. It mattered not, whether he was for or against the proposed amendment, he should be opposed to agreeing to it at this late day. He believed the Constitution to be the rock of the Union; and he doubted whether as good a one could be formed, were the present one lost. He believed it had been formed by our most

distinguished statesmen with the greatest care. Whenever, therefore, it was contemplated to alter a part of this Constitution, it ought to be done with the greatest circumspection. He confessed that he trembled at the idea of altering it, though he was attached to that part of it which gave the right of altering it. As to this particular provision, he was far from having made up his mind on it. It does appear, on first blush, that the people should designate the persons voted for as President and Vice President; but, on second thoughts, there were many reasons against it. Congress having agreed to adjourn on Monday, it was improper now to discuss the subject, as it was impossible to give it a full investigation. The more important we deem the amendment, the greater is the regard which should be paid to the mode of adopting it; and at this moment, when there is scarcely a quorum of members present, if you take it up, you in some measure prevent a discussion of it.

Mr. H. concluded by calling for the yeas and nays on taking up the amendment.

Mr. FOSTER said he hoped the amendment would not be taken up at this late hour. It would be recollected that at an antecedent session he had laid a similar resolution on the table, when it had been refused by the House to take it up from the late day of the session, though this amendment had been offered at the recommendation of New Hampshire. As this treatment was thought respectful to New Hampshire, Mr. F. did not think that it would be disrespectful to New York.

Mr. BAYARD wished to know whether it was in order to move the postponement of the question till November.

The SPEAKER said such a motion was not in order, as the resolutions had been referred to the Committee of the Whole on the state of the Union.

Mr. DAVIS was sorry the gentleman from New York (Mr. VAN CORTLANDT) had thought proper to place the House in so delicate a situation. After suffering these resolutions to lay for some months, they are now brought up on the last day, when the House is not prepared to investigate them, though there may be weighty considerations in favor of them. He was, therefore, against taking them up at present. If taken up, he should be almost compelled to vote against them; not, however, because he was really against them, but from the manner in which they are urged. Are gentlemen prepared to say that the House is in a fit state to investigate them? If there is a determination to carry them whether reasonable or not, it is certain a majority may carry them. Had they been called up a month ago, he should have been pleased; but he thought it the height of imprudence to push them now.

Mr. VAN CORTLANDT said he was sorry the gentleman from South Carolina (Mr. HUGER) was uneasy at the disorder of the House. For his part, he had never seen the House more orderly. As to its being a late hour, that, he conceived, had nothing to do with the business, as the resolutions had lain on the table for a long time, and he pre-

H. OF R.

Amendments to the Constitution.

MAY, 1802.

sumed every gentleman, expecting to be called on to vote on them, had made up his mind. As to the remarks of the gentleman from New Hampshire, (Mr. FOSTER,) it cannot surely be a reason with him to vote now against these resolutions, because the House had formerly been against his resolutions.

Mr. MOTT was sorry these resolutions were taken up at this late hour. He did not hesitate to say that he was in favor of them; but he was against taking them up at so late a day of the session.

Mr. ELMENDORF said, if the subject required any particular investigation, he should be opposed to taking it up to-day. But it was so exceedingly plain that he was persuaded it ought not to take up much of the time of the House. He certainly wished it had been taken up when there was a fuller House; but he thought it so important, that it would at no time be improper to adopt it by the vote of a Constitutional majority. If it were important that the people should elect the man of their choice, it ought to be adopted. It must be evident to every gentleman, that in the Convention there must have been great contrariety of opinion on this point; and in practising under the Constitution a great variety of evils had been discovered. As, therefore, there had been a practical demonstration of the evils of the present plan, he believed the public mind was prepared to receive the amendment. This being a self-evident truth, he should vote in favor of adopting the amendment at this time.

Mr. BAYARD felt strongly impressed by the reasons which had been assigned in point of time. The subject was not totally novel to him; but though he had heard it spoken of, expecting that it would be regularly brought up, he had not examined it in proportion to its magnitude. He believed we ought to be extremely cautious in amending the Constitution, as he believed that no instrument had been better weighed in all its parts. He confessed he was puzzled to account for the regulations prescribed in the election of a President and Vice President; yet he was perfectly satisfied there must have been very strong reasons for it, from his reliance on the talents of those who formed the Constitution. He had, however, no hesitation in saying, from all his reflections on the subject, that he was inclined to be in favor of a discrimination of the individuals voted for as President and Vice President, as well as in favor of districts. But he believed it very improper at this late hour to agitate the subject, and he considered it a bad precedent at the end of a session to make any innovation in the Constitution. However immaterial any amendment might appear to be, it ought to be very circumspectly examined; for often our first impressions are erroneous, and we are induced, on mature reflection, to change them. He was, therefore, in point of time, against taking up the resolutions; he thought it improper, when the members were occupied in preparing to depart, in packing up their clothes, with which they had packed up many of their ideas; when we are here, barely to go

through the formalities attending the final passage of bills. He concluded by observing, that he repeated it, that he was friendly to the amendment, but hostile to taking it up at that time.

The question on taking up the resolutions was then taken by yeas and nays, and carried—yeas 38, nays 30, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, Matthew Clay, John Clopton, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Thomas Morris, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Talaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, William Helms, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, Henry Southard, John Stanley, John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Mr. GRISWOLD wished to know, whether, on a preparatory question, the concurrence of two-thirds were required, as this would form a precedent.

The SPEAKER decided that two-thirds were not necessary.

The House resolved itself into a Committee of the Whole—Mr. S. SMITH in the Chair.

As soon as the Chairman had taken the Chair, Mr. BAYARD rose, and observed, that he believed the question to be determined was on going into Committee on the state of the Union.

The CHAIRMAN said, the decision was for going into a Committee for the purpose of taking into consideration an amendment to the Constitution, "That in all future elections of President and Vice President, the persons voted for shall be particularly designated by declaring which is voted for as President, and which as Vice President."

The SPEAKER said that question had not been stated from the Chair. The only question was on going into Committee on the state of the Union; and it was now competent to any member to offer any resolution on the state of the Union, or the House may consider the subject notified as continued.

Mr. BAYARD moved for that proposition of amendment that related to a division of each State into districts.

The CHAIRMAN, having read it, said he had always considered it as the practice, that the Committee must take up that resolution on which it had been moved to go into committee. He, therefore, considered the other resolutions as before the Committee.

Mr. HUGER.—I ask if the Committee has not a

MAY, 1802.

Amendments to the Constitution.

H. OF R.

right to take up which resolution it pleases? If they have, I hope the motion of the gentleman from Delaware (Mr. BAYARD) will prevail.

The CHAIRMAN.—The question is already decided.

Mr. BAYARD thought there was great justice in the argument of the gentleman from Kentucky, (Mr. DAVIS,) that the House was not in a state to make an amendment to the Constitution. He could hardly believe that, had it been proposed to amend the Constitution on an earlier day, it would have been done without a word of explanation being uttered. He believed this was doing too much, and without the defect of the former system being pointed out. He believed there was not a more important opinion than that the instrument from which we derive our power, and the nation its liberty, should be touched with a cautious hand. He believed gentlemen would see that this was not the time to touch it, and they will say, we will not agree to this amendment until the other, for districting the States, is first agreed to; he, therefore, moved that the Committee should rise.

Mr. BACON hoped the Committee would not rise until other reasons were assigned than he had heard. The House had just agreed to take up the resolutions, and it is now moved to recede from the determination of the House without any reason being assigned for the change. The question was important, but not novel. He believed that every citizen called upon to give his vote had paid particular attention to, and had made up his mind upon it. This was the case with himself. He had long been of opinion that such an amendment was very important, and even necessary, and he should continue to think so until he had heard satisfactory reasons in opposition assigned. He was disposed to listen with the greatest attention and candor to the arguments of gentlemen. The gentleman from Delaware urged as a reason against taking up this amendment its great importance; and now he is for taking up another amendment infinitely more important.

Mr. B. concluded by saying that as this was a subject on which the welfare of the United States depended, in his opinion the House could not excuse itself from taking it up.

Mr. MITCHELL said he had almost despaired of this subject being acted upon after the late decision of the House. He was, however, very glad to find the House now disposed to take it up. He was much surprised that the gentleman from Delaware wanted information, not only from his usual attention to Constitutional questions, but from the part he took in the Presidential election. He believed the question to be very plain, and one which had been well considered by every citizen in the United States. Under the Constitution electors are to vote for two persons, one of whom does not reside in the State of the electors; but it does not require a designation of the persons voted for. Wise and virtuous as were the members of the Convention, experience has shown that the mode therein adopted cannot be carried into operation; for the people do not elect a per-

son for an elector who, they know, does not intend to vote for a particular person as President. Therefore, practically, the very thing is adopted, intended by this amendment. If this proposition is now adopted by us, it will still have to be sanctioned by the other branch of the Legislature, and afterwards by three-fourths of the States. For these reasons, Mr. M. thought this amendment ought to be adopted. It ought to be adopted, because it had been maturely considered; because it had been recommended by several States, and because serious inconveniences had been, and still more serious inconveniences might be experienced under the present mode.

Mr. DANA said he was for the Committee rising, as this was not a proper time to act on so important a subject. He knew that the gentleman from Massachusetts (Mr. BACON) had said his mind was made up, though he was ready to hear any arguments against the amendment. He has told us that he guessed every member was ready to act; but as this was only a guess, others may guess as well as he. He also thought his friend from Delaware (Mr. BAYARD) inconsistent; but the very remark of the gentleman from Massachusetts fortified the correctness of the observation made by his friend from Delaware, who had said one of the proposed amendments is important, the other is still more important, and thence the necessity of more time for deliberation.

If the subject of amending the Constitution be taken up, a second question may arise, whether a Vice President is wanted at all; whether that office was not created solely to influence the purposes of the present mode. He believed the journals of the Convention would show that the office of Vice President was not introduced till this mode was laid down. Other amendments may be found necessary. He was willing to consider that part of the Constitution which related to the apportionment of representatives, and to determine whether the representatives should be in proportion to the whites, or in proportion to the whites compounded with slaves. He believed, also, when an amendment was proposed, it was proper to view all its parts, and see whether an amendment apparently necessary would not materially differ from other parts of the Constitution equally necessary. For this examination there was not time.

Mr. HUGER said he was willing to acknowledge that his bias was in favor of the amendment; but he did not like to be obliged at this late moment to vote on it, without having time to consider it himself, and without giving time to others to investigate it. Besides, it was evident, that if the amendment for a discrimination was first adopted, the other amendment for districts may not be adopted; and in the opinion of some gentlemen it was important to adopt both. This measure is now forced upon us. In this sitting we are obliged to vote in the negative, though rather in favor of the amendment. But when thus improperly forced upon us, we think it the safest course to vote against it.

Where is the necessity of this precipitation?

There cannot be party motives in the measure; for the same Legislature will meet the next session. In these circumstances, he thought it an act of cruelty to force those to vote who are not prepared. He said his mind was not made up, nor did he believe the minds of the community were. He could not say from his own personal knowledge what was the wishes of his constituents; though he was rather inclined to think they were for the amendment. He believed the design of the Constitution in originating this business in these two Houses of Congress, was to have it investigated in a body whose members came from every part of the Union, and by having the debate published in every part of the Union to prepare the people correctly to judge. He, therefore, conceived it of immense importance that every amendment should be maturely investigated. He said, he looked round and scarcely saw a quorum. Are gentlemen prepared to offer arguments? He did not like to allude to party; but do not gentlemen know that those who agree with him have more than a third in this House when it is full? He did not know that that was now the case. In the last count we had only sixty-eight votes, and yet with these numbers we are called upon to decide, at the end of the session, a Constitutional question.

The question was taken on the Committee rising, and lost—ayes 25.

The question was then taken on the resolution of amendment, on which there were—ayes 42, noes 22.

The CHAIRMAN.—The question is lost.

Mr. VARNUM said he apprehended the Committee were to vote by simple majorities; this is a preparatory step, and the House will decide by a vote of two-thirds.

Mr. NICHOLSON was clearly of this opinion, that the Committee ought to decide in the usual way.

Mr. GRISWOLD said he did not know how the gentleman could find the mode of deciding in Committee but by that practised in the House.

Mr. ELMENDORF thought no more than a simple majority was required. He, therefore, appealed from the decision of the Chair. After some explanation, Mr. E. observed that as the House would have to decide upon the same point, he would withdraw his motion of appeal.

The Committee rose, and reported their disagreement to the amendment—two-thirds of the members, the Constitutional number, not concurring in it.

The question was carried—ayes 42—for taking up the report.

The House immediately took up the report; when

The SPEAKER put the question on concurring with the report of the Committee of the Whole in their disagreement to the amendment.

Mr. HUGER moved to postpone the further consideration of the amendment to the third Monday in November.

Mr. H. said he would not repeat the arguments he had before used. Of those against taking up

the amendment at this time, there were, at least the gentleman from Delaware and himself who were likely to be in favor of it, if taken up at a proper time. He should, therefore, regret if, by voting in the negative, it should be lost. He wished it to be understood, and particularly by his constituents, that he voted against it, not because he was really against the amendment, but from the consideration of the improper time at which it was urged. He concluded by calling for the yeas and nays.

Mr. VAN CORTLANDT said he was very sorry he could not oblige the gentleman (Mr. HUGER) with the delay he solicited, and he was also very sorry that that gentleman could not oblige himself and his constituents at the same time. He regretted that it was so late in the session; but had not the subject been before the House for months, and before the people for years? The gentleman says he wants time—to repeat a hundred and a hundred times what the House had heard before. At this endless repetition Mr. VAN C. was surprised. He said, he should in many cases have taken a part in debate, if other gentlemen had not expressed the same ideas which he entertained himself. He did not wish to say that other gentlemen had made long speeches for the purpose of appearing in the newspapers; though he must say the conduct of the gentleman from South Carolina looked like it. Mr. VAN C. concluded by observing that it was their duty to do good, and if the adoption of this amendment would have that effect, it could never be too late to adopt it.

Mr. HUGER said however favorable that gentleman may be to dumb legislation, he confessed he was inimical to it.

The question of postponement was then taken by yeas and nays, and lost—yeas 28, nays 44, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, William Helms, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, Henry Southard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, Matthew Clay, John Clopton, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Thomas Morris, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

The question recurred, on concurring in the

MAY, 1802.

Amendments to the Constitution.

H. OF R.

report of the Committee in their disagreement to the amendment.

Mr. BAYARD said he was sorry the subject was pressed upon them. It had not undergone in his mind a mature consideration. He considered his giving a vote of concurrence as operating simply a postponement till November. He had voted for the postponement, and he would vote for a concurrence. Next session the subject may be taken up, and maturely considered.

Mr. NICHOLSON inquired whether the question of concurrence required two-thirds.

The SPEAKER.—This is the final question, and therefore requires two-thirds. All preparatory questions only require a majority.

Mr. VARNUM asked whether the question would be final. It appeared to him that after this is decided, there will be another question on agreeing to the resolution itself.

The question was taken, by yeas and nays, on agreeing to the report, and lost—yeas 24, nays 48—two-thirds voting against concurrence, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Plater, Nathan Read, William Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, Wm. Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Thomas Morris, James Mott, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

Mr. HUGER said he would repeat what he had said before, viz: that he did not vote against the amendment because he was opposed to it, but because he was decidedly opposed to the time in which it was proposed.

Mr. HUGER moved the postponement of the third reading of the resolution till Monday, lost—ayes 25.

Resolved, That the said resolution be read a third time to-day.

The engrossed resolution was afterwards brought in, and read a third time, when the question was taken on it by yeas and nays, and carried—yeas 47, nays 14, as follows:

YEAS—John Archer, John Bacon, Theodorus Bailey, Phaniel Bishop, Richard Brent, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Ed-

win Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

NAYS—James A. Bayard, Thomas Boude, Manasseh Cutler, John Davenport, Roger Griswold, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Nathan Read, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, and Lemuel Williams.

Ordered, That the Clerk of the House do carry the said resolution to the Senate, and desire their concurrence.

MONDAY, May 3.

Ordered, That there be a call of the House this day at two o'clock in the afternoon.

Resolved, That the President of the United States be requested to cause the proper officers to prepare and lay before the House, during the first week of the ensuing session of Congress, the following statements:

A detailed account of the expenditure and application of all public moneys which have passed through the Quartermaster General's department, from the first day of January, one thousand seven hundred and ninety-seven, to the thirty-first of December, one thousand eight hundred and one.

A similar account of the expenditure of all public moneys which have passed through the Navy agents.

A similar account of the expenditure and application of all the moneys drawn out of the Treasury for the contingencies of the Military and Naval Establishments.

Copies of the contracts made by the Navy Department for the purchase of timber and stores, and the accounts of the moneys paid under such contracts.

Ordered, That Mr. ROBERT WILLIAMS and Mr. THOMAS MORRIS be appointed a committee to present the foregoing resolution to the President of the United States.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to amend an act, entitled 'An act for the relief of sick and disabled seamen,' with two amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill first mentioned in the said message, and the same being severally twice read, were agreed to.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia."

Whereupon, *Resolved*, That this House doth agree to the said amendments.

H. of R.

Georgia Limits—The District of Columbia.

MAY, 1802.

On motion, *Ordered*, That the call of the House directed by a vote of this day, to be at two o'clock, be postponed until four o'clock in the afternoon.

GEORGIA LIMITS.

Mr. GRISWOLD moved the appointment of a committee to bring in a bill to repeal an act for the amicable settlement of limits with the State of Georgia, &c.

[The object of this motion was to prevent the agreement lately made between the Commissioners of the United States and of Georgia from going into effect before the next session of Congress; the said agreement declaring that the settlement shall be conclusive, unless Congress shall repeal within six months the above law.]

This motion was supported by Messrs. GRISWOLD, HENDERSON, and DAVIS, and opposed by Messrs. MILLEDGE, S. SMITH, and ELMENDORF.

When the yeas and nays were taken, and the motion lost—yeas 24, nays 36, as follows:

YEAS—Thomas Boude, John Campbell, Manasseh Cutler, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, John A. Hanna, Seth Hastings, Archibald Henderson, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, William Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, Edwin Gray, William Helms, James Holland, David Holmes, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

DISTRICT OF COLUMBIA.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia,' with several amendments; to which they desire the concurrence of this House.

The most material amendments authorize the erection of a jail, appropriating therefor \$17,000, and the organization of the militia by the President.

The amendment which authorizes the erection of a jail gave rise to some debate; in which it was supported by Messrs. TALIAFERRO and HUGER, and opposed by Messrs. ELMENDORF, DAVIS, and VARNUM.

Mr. SOUTHARD moved to strike out \$17,000 and insert \$8,000. This last motion prevailed; and, so amended, the amendment of the Senate was agreed to—yeas 32, nays 26, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, John Campbell, John Clopton, Manasseh Cutler, John Dawson, Wm. Dickson, Abiel Foster, Calvin Goddard, Roger Griswold, Daniel Heister, William Helms, Archibald Henderson, David Holmes, Benjamin Huger, Lewis R.

Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Thomas Plater, Nathan Read, John Smith, of Virginia, Henry Southard, John Taliaferro, jr., Samuel Tenney, Philip R. Thompson, Philip Van Cortlandt, John P. Van Ness, and Henry Woods.

NAYS—Thomas Boude, Robert Brown, John Condit, Richard Cutts, John Davenport, Thomas T. Davis, Lucas Elmendorf, John Fowler, John A. Hanna, Joseph Heister, Michael Leib, Samuel L. Mitchell, Thos. Moore, James Mott, John Smilie, John Smith, of New York, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, David Thomas, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

On the question that the House do agree to the said twelfth amendment of the Senate, as amended, it was resolved in the affirmative.

Resolved, That this House doth also agree to all the other amendments proposed by the Senate to the said bill.

The House then adjourned until five o'clock, post meridian.

FIVE O'CLOCK, P. M.

The House met pursuant to adjournment.

A message from the Senate informed the House that the Senate have disagreed to the resolution of this House, in the form of a concurrent resolution of the two Houses, "proposing an article of amendment to the Constitution of the United States, respecting the election of President and Vice President;" two-thirds of the members present in the Senate not having concurred in their agreement to the same.

On motion, *Ordered*, That Mr. GRISWOLD and Mr. SAMUEL SMITH be appointed a committee, on the part of this House, jointly, with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with the committee appointed on the part of this House, to wait on the President of the United States, and notify him of the proposed recess of Congress.

Mr. GRISWOLD, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them he had no farther communication to make during the present session.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn until the first Monday in December next; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that the Senate, having completed the Legislative business before them, are now ready to adjourn. Whereupon,

The SPEAKER adjourned the House until the first Monday in December next.

Internal Taxes.

SUPPLEMENTAL SPEECH.

[The following is the conclusion of the speech of GOUVERNEUR MORRIS, delivered in the Senate on the 31st of March, 1802, on the Repeal of the Internal Taxes,—and which was unavoidably omitted, in its proper place, while the volume was in course of printing. It should have been inserted in page 235, immediately before Mr. MASON.]

MR. MORRIS, in conclusion.—I have heard it said, that however improper it may be to repeal these taxes, it is now too late to object; for that, after the recommendation of our First Magistrate, they are considered by the people as no longer to be paid. I will not question the veracity of those who make this assertion, but I must beg leave to withhold my assent. The people of this country know, that to their Representatives alone, is delegated the right of taxation. This is no part of the Executive power. I will not say that the recommendation was unconstitutional. I will not say that it was unjustifiable. But I will say that it was imprudent. And if it does, indeed, involve the consequence which has been stated, I must add that it is injurious. It would have been more proper to have left the unbiassed consideration of this great subject to the two Houses of Congress. But, sir, though I cannot approve, I will not condemn the conduct of our First Magistrate. He, I presume, acted from what he conceived to be his duty. Let us then imitate his example, and perform what on due advisement shall appear to be our duty. Let me say, sir, that there is too much of precipitancy, too much of rashness, in this repeal. It would be wiser to wait, until we possess a knowledge of those facts on which a sound system must be founded. Our experience of the past gives no sufficient light for the future. There is, moreover, during the present, and there will be for some succeeding years, an unusual pressure of our public debt, arising from heavy instalments of foreign loans. This therefore, is not the moment to make a change. I have indeed heard the advocates of the proposed repeal say, they are desirous of paying the public debt, not only according to the terms to which we stand pledged, but at an earlier day. If this be so, how can they think of taking off taxes, or by what strange invention or device do they expect to pay debts by diminishing income? I should have supposed that the best way to effect that object would be to increase our revenues, lessen our expenses, and apply our whole means to the payment of what we owe, steadily and faithfully.

Mr. President, one word more. Hitherto, I have considered this question on the broad ground of policy, of expediency, and of public economy. I have endeavored to show that duties are the most expensive species of tax. That, from a change in the political affairs of the world, and in our own particular situation, there is reason to suppose our revenue will suffer considerable diminution. And that it is more than probable, duties so high, as those under which our commerce now labors, will be evaded. And thence, I have endeavored to draw the natural conclusion, that,

instead of repealing the internal taxes, we should lessen the duties, and raise that part which is taken off in the seaports, by direct tax in the country. All this was under the idea, that you had a right to repeal these taxes. But, by recurring to the first volume of your laws, in the 335th page, I find that the sixtieth section of an act laying duties upon spirits distilled within the United States, runs thus:

“And be it further enacted, That the net product of the duties hereinbefore specified, which shall be raised, levied, and collected by virtue of this act, or so much thereof as may be necessary, shall be, and is hereby, pledged and appropriated for the payment of the interest of the several and respective loans, which had been made in foreign countries, prior to the fourth day of August last; and also upon all and every the loan and loans which have been and shall be made and obtained pursuant to the act, entitled ‘An act making provision for the debt of the United States;’ and, according to the true intent and meaning of the said act, of the several provisions and engagements therein contained and expressed, and subject to the like priorities and reservations as are made and contained in and by the said act, in respect to the moneys therein appropriated, and subject to this farther reservation; that is to say, of the net amount or product during the present year, of the duties laid by this act, in addition to those heretofore laid upon spirits imported into the United States, from any foreign port or place, and of the duties laid by this act on spirits distilled within the United States, and on stills; to be disposed of, towards such purposes for which appropriations shall be made during the present session. And to the end, that the said moneys may be inviolably applied in conformity to the appropriation hereby made, and may never be diverted to any other purpose, until the final redemption or reimbursement of the loans or sums for the payment of the interest whereof they are appropriated, an account shall be kept of the receipts and disposition thereof, separate and distinct from the product of any other duties, impost, excise, and taxes whatsoever, except those heretofore laid, and appropriated to the same purposes.”

And, sir, I find that the sixty-second section of the same act runs thus:

“And be it further enacted, That the several duties imposed by this act shall continue to be collected and paid, until the debts and purposes for which they are pledged and appropriated shall be fully discharged and satisfied, and no longer: Provided always, That nothing herein contained shall be construed to prevent the Legislature of the United States, from substituting other duties or taxes of equal value to all or any of the said duties and imposts.”

This law was approved by GEORGE WASHINGTON, on the third day of March, in the year 1791.

Now then, I ask, can we rightfully take off this tax without laying on an equivalent, before our debts are paid? I will not say that it is unconstitutional; though while we yet had a Constitution, I should have opposed it on that ground. I will not say you have not the power to do it, because, under the new doctrine of your Legislative omnipotence, I see not the bounds of your power. But I remember well, and let me now call back to the recollection of this Senate, what passed on a late important occasion. It was asked, when we have

Internal Taxes.

made a grant, can we resume it? When we have contracted a debt, can we refuse to pay it? When we have made a promise, can we violate it? To these questions it was answered no! Here is a vested right in third persons. The Government is bound. In the case of a debt it has received a consideration, and the engagement taken with the public creditor cannot be broken. I ask, then, what words in our language, or in any language, can be more full, more solemn, or form a contract more sacred than those I have just read. The net amount of the duties is pledged to our creditors, and appropriated to the payment of our debt; and to the end that it may be inviolably applied in conformity to that appropriation, and may never be diverted to any other purpose, a separate account is to be kept, and it is again declared that the duties shall continue to be collected and paid

till the debts for which they are pledged shall be fully discharged and satisfied. If these terms be not binding on the Legislature, let us hear the form, if any can be found, of a contract more obligatory. I ask those who mean to vote for this repeal, what they meant by the declaration that vested rights could not be resumed, and that engagements taken with public creditors could not be broken? If, by a wild exertion of licentious force we tear asunder these bands, can we again ask of mankind any share of their confidence? Can we expect to enjoy credit when we show ourselves regardless of our plighted faith?

Sir, I consider this repeal as inconsistent with the true interest of the great body of our people. It appears to me dangerous both to our revenue and to our commerce. But above all, I consider it as a flagrant violation of the public faith.

PUBLIC ACTS OF CONGRESS;

PASSED AT THE FIRST SESSION OF THE SEVENTH CONGRESS, BEGUN AND HELD
AT THE CITY OF WASHINGTON, DECEMBER 7, 1801.

AN ACT for the apportionment of Representatives among the several States, according to the second enumeration.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the third day of March, one thousand eight hundred and three, the House of Representatives shall be composed of members elected agreeably to a ratio of one member for every thirty-three thousand persons in each State, computed according to the rule prescribed by the Constitution; that is to say: within the State of New Hampshire, five; within the State of Massachusetts, seventeen; within the State of Vermont, four; within the State of Rhode Island, two; within the State of Connecticut, seven; within the State of New York, seventeen; within the State of New Jersey, six; within the State of Pennsylvania, eighteen; within the State of Delaware, one; within the State of Maryland, nine; within the State of Virginia, twenty-two; within the State of North Carolina, twelve; within the State of South Carolina, eight; within the State of Georgia, four; within the State of Kentucky, six; and within the State of Tennessee, three members.

NATHANIEL MACON,

Speaker of the House of Representatives.

ABRAHAM BALDWIN,

President of the Senate, pro tempore.

Approved, January 14, 1802.

TH. JEFFERSON,

President of the United States.

An Act concerning the Library for the use of both Houses of Congress.

Be it enacted, &c., That the books and maps purchased by direction of the act of Congress, passed the twenty-fourth of April, one thousand eight hundred, together with the books or libraries which have heretofore been kept separately by each House, shall be placed in the Capitol, in the room which was occupied by the House of Representatives, during the last session of the sixth Congress.

SEC. 2. *And be it further enacted,* That the President of the Senate and Speaker of the House of Representatives, for the time being, be, and

they hereby are, empowered to establish such regulations and restrictions in relation to the said library, as to them shall seem proper, and, from time to time, to alter or amend the same: *Provided,* That no regulation shall be made repugnant to any provision contained in this act.

SEC. 3. *And be it further enacted,* That a librarian, to be appointed by the President of the United States solely, shall take charge of the said library; who, previous to his entering upon the duties of his office, shall give bond, payable to the United States, in such a sum, and with such security, as the President of the Senate and Speaker of the House of Representatives, for the time being, may deem sufficient, for the safe keeping of such books, maps, and furniture as may be confided to his care, and the faithful discharge of his trust, according to such regulations as may be, from time to time, established for the government of the said library; which said bond shall be deposited in the office of the Secretary of the Senate.

SEC. 4. *And be it further enacted,* That no map shall be permitted to be taken out of the said library by any person; nor any book, except by the President and Vice President of the United States, and members of the Senate and House of Representatives, for the time being.

SEC. 5. *And be it further enacted,* That the keeper of the said library shall receive for his services, a sum not exceeding two dollars per diem for every day of necessary attendance; the amount whereof, together with the necessary expenses incident to the said library, after being ascertained by the President of the Senate and Speaker of the House of Representatives, for the time being, shall be paid out of the fund annually appropriated for the contingent expenses of both Houses of Congress.

SEC. 6. *And be it further enacted,* That the unexpended balance of the sum of five thousand dollars appropriated by the act of Congress aforesaid, for the purchase of books and maps for the use of the two Houses of Congress, together with such sums as may hereafter be appropriated to the same purpose, shall be laid out under the direction of a joint committee, to consist of three members of the Senate and three members of the House of Representatives.

Approved, January 26, 1802.

Acts of Congress.

An Act for the protection of the Commerce and Seamen of the United States, against the Tripolitan Cruisers.

Whereas the Regency of Tripoli, on the coast of Barbary, has commenced a predatory warfare against the United States:

Be it enacted, &c., That it shall be lawful fully to equip, officer, man, and employ such of the armed vessels of the United States, as may be judged requisite by the President of the United States, for protecting effectually the commerce and seamen thereof on the Atlantic Ocean, the Mediterranean and adjoining seas.

SEC. 2. *And be it further enacted,* That it shall be lawful for the President of the United States to instruct the commanders of the respective public vessels aforesaid, to subdue, seize, and make prize of all vessels, goods, and effects, belonging to the Bey of Tripoli, or to his subjects, and to bring or send the same into port, to be proceeded against, and distributed according to law; and also to cause to be done all such other acts of precaution or hostility as the state of war will justify, and may, in his opinion, require.

SEC. 3. *And be it further enacted,* That, on the application of the owners of the private armed vessels of the United States, the President of the United States may grant to them special commissions, in the form which he shall direct, under the seal of the United States; and such private armed vessels, when so commissioned, shall have the like authority for subduing, seizing, taking, and bringing into port, any Tripolitan vessel, goods or effects, as the beforementioned public armed vessels may by law have; and shall therein be subject to the instructions which may be given by the President of the United States for the regulation of their conduct; and their commissions shall be revocable at his pleasure: *Provided,* That before any commission shall be granted as aforesaid, the owner or owners of the vessel for which the same may be requested, and the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or, if such vessel be provided with more than one hundred and fifty men, in the penal sum of fourteen thousand dollars, with condition for observing the treaties and laws of the United States, and the instructions which may be given, as aforesaid; and also, for satisfying all damages and injuries which shall be done, contrary to the tenor thereof, by such commissioned vessel; and for delivering up the commission, when revoked by the President of the United States.

SEC. 4. *And be it further enacted,* That any Tripolitan vessel, goods, or effects, which shall be so captured and brought into port by any private armed vessel of the United States, duly commissioned, as aforesaid, may be adjudged good prize, and thereupon shall accrue to the owners, and officers, and men of the capturing vessel, and shall be distributed according to the agreement which shall have been made between them, or, in failure of

such agreement, according to the discretion of the court having cognizance of the capture.

SEC. 5. *And be it further enacted,* That the seamen may be engaged to serve in the Navy of the United States for a period not exceeding two years; but the President may discharge the same sooner, if, in his judgment, their services may be dispensed with.

Approved, February 6, 1802.

An Act extending the privilege of franking and receiving letters, free of postage, to any person admitted, or to be admitted, to take a seat in Congress, as a delegate; and providing compensation for such delegate.

Be it enacted, &c., That any person admitted, or who may hereafter be admitted, to take a seat in Congress, as a delegate, shall enjoy the privilege of sending and receiving letters, free of postage, on the same terms, and under the same restrictions, as are provided for the members of the Senate and of the House of Representatives of the United States, by the act, entitled, "An act to establish the Post Office of the United States;" and that every such delegate so admitted to a seat, be, and is hereby, authorized to receive, free of postage, under the said restrictions, any letters directed to him, and which shall have arrived at the seat of Government prior to the passage of this act: and that every such delegate shall receive, for his travelling expenses and attendance in Congress, the same compensation as is or may be allowed, by law, to the members of the Senate and House of Representatives of the United States, to be certified and paid in the same manner.

Approved, February 18, 1802.

An Act making certain partial appropriations for the year one thousand eight hundred and two.

Be it enacted, &c., That the sum of sixty thousand dollars be, and the same hereby is, appropriated towards defraying the expenses of the pay of the Army, during the year one thousand eight hundred and two.

SEC. 2. *And be it further enacted,* That the following sums be, and the same hereby are, appropriated to the purpose herein recited, respectively, that is to say: for the contingent expenses of the Department of the Treasury, to make good the deficiency of the former appropriations for the same, the sum of sixteen hundred and thirteen dollars and fifty-seven cents.

For the printing of the public accounts, to make good the deficiency of former appropriations for the same, the sum of fourteen hundred dollars.

Towards the contingent expenses of the Department of the Treasury, during the year one thousand eight hundred and two, the sum of one thousand dollars.

Towards the contingent expenses of the House of Representatives, during the year one thousand eight hundred and two, the sum of three thousand dollars.

SEC. 3. *And be it further enacted,* That the accounting officers of the Treasury Department

Acts of Congress.

be, and they are hereby authorized, in the settlement of the accounts of the several officers herein-after mentioned, to make the following allowances for clerk hire, during the year one thousand eight hundred and one, in addition to the allowances now established by law; that is to say:

To the Accountant of the Navy Department, one thousand nine hundred dollars, and thirty-one cents.

To the Purveyor of Public Supplies, seven hundred dollars.

To the Superintendent of Stamps, three hundred and seventy-seven dollars and seventy-eight cents.

To the Commissioner of Loans of Pennsylvania, one thousand five hundred dollars.

Provided, however, That the expense, thus allowed, shall have been actually incurred: *And provided also,* That the whole amount paid to each abovementioned officer, respectively, for his compensation, and that of his clerks and persons employed in his office, for the year aforesaid, shall not exceed the sums heretofore appropriated, by law, to those objects, respectively, during the said year.

SEC. 4. *And be it further enacted,* That the aforesaid sums shall be paid and discharged out of any moneys in the Treasury of the United States, not otherwise appropriated.

Approved, February 23, 1802.

An Act to repeal certain acts respecting the organization of the Courts of the United States; and for other purposes.

Be it enacted, &c., That the act of Congress passed on the thirteenth day of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the courts of the United States," from and after the first day of July next, shall be, and is hereby, repealed.

SEC. 2. *And be it further enacted,* That the act passed on the third day of March one thousand eight hundred and one, entitled "An act for altering the times and places of holding certain courts therein mentioned and for other purposes;" from and after the said first day of July next, shall be, and is hereby, repealed.

SEC. 3. *And be it further enacted,* That all the acts, and parts of acts, which were in force before the passage of the aforesaid two acts, and which by the same were either amended, explained, altered, or repealed, shall be, and hereby are, after the said first day of July next, revived, and in as full and complete force and operation, as if the said two acts had never been made.

SEC. 4. *And be it further enacted,* That all actions, suits, process, pleadings, and other proceedings, of what nature or kind soever, depending or existing in any of the circuit courts of the United States, or in any of the district courts of the United States, acting as circuit courts, or in any of the additional district courts, which were established by the aforesaid act of Congress, passed on the thirteenth day of February, one thousand eight hundred and one, shall be, and hereby are,

from and after the said first day of July next, continued over to the circuit courts, and to the district courts, and to the district courts acting as circuit courts, respectively, which shall be first thereafter holden in, and for the respective circuits and districts, which are revived and established by this act, and to be proceeded in, in the same manner as they would have been had they originated prior to the passage of the said act, passed on the thirteenth day of February, one thousand eight hundred and one.

SEC. 5. *And be it further enacted,* That all writs and process, which have issued, or may issue before the said first day of July next, returnable to the circuit courts, or to any district court acting as a circuit court, or any additional district court established by the aforesaid act passed the thirteenth day of February, one thousand eight hundred and one, shall be returned to the next circuit court, or district court, or district court acting as a circuit court, re-established by this act; and shall be proceeded on therein, in the same manner, as they could, had they been originally returnable to the circuit courts, and district courts acting as circuit courts, hereby revived and established.

Approved, March 8, 1802.

An Act fixing the Military Peace Establishment of the United States.

Be it enacted, &c., That the Military Peace Establishment of the United States, from and after the first of June next, shall be composed of one regiment of artillerists and two regiments of infantry, with such officers, military agents, and engineers, as are hereinafter mentioned.

SEC. 2. *And be it further enacted,* That the regiment of artillerists shall consist of one colonel, one lieutenant colonel, four majors, one adjutant, and twenty companies; each company to consist of one captain, one first lieutenant, one second lieutenant, two cadets, four sergeants, four corporals, four musicians, eight artificers, and fifty-six privates; to be formed into five battalions: *Provided always,* That it shall be lawful for the President of the United States to retain, with their present grade, as many of the first lieutenants, now in service, as shall amount to the whole number of lieutenants required; but that in proportion as vacancies happen therein, new appointments be made to the grade of second lieutenants, until their number amount to twenty; and each regiment of infantry shall consist of one colonel, one lieutenant colonel, one major, one adjutant, one sergeant major, two teachers of music, and ten companies; each company to consist of one captain, one first and one second lieutenant, one ensign, four sergeants, four corporals, four musicians, and sixty-four privates.

SEC. 3. *And be it further enacted,* That there shall be one brigadier general, with one aid-de-camp, who shall be taken from the captains or subalterns of the line; one adjutant and inspector of the army, to be taken from the line of field officers; one paymaster of the army, seven pay-

masters, and two assistants, to be attached to such districts as the President of the United States shall direct, to be taken from the line of commissioned officers, who, in addition to their other duties, shall have charge of the clothing of the troops; three military agents, and such number of assistant military agents as the President of the United States shall deem expedient, not exceeding one to each military post; which assistants shall be taken from the line; two surgeons; twenty-five surgeon's mates, to be attached to garrisons or posts, and not to corps.

SEC. 4. *And be it further enacted*, That the monthly pay of the officers, non-commissioned officers, musicians, and privates, be as follows, to wit: to the brigadier general, two hundred and twenty-five dollars, which shall be his full and entire compensation, without a right to demand or receive any rations, forage, travelling expenses, or other perquisites or emoluments whatsoever, except such stationery as may be requisite for the use of his department; to the adjutant and inspector of the army, thirty-eight dollars in addition to his pay in the line, and such stationery as shall be requisite for his department; to the paymaster of the army, one hundred and twenty dollars, without any other emolument, except such stationery as may be requisite in his department and the use of the public office now occupied by him; to the aid-de-camp, in addition to his pay in the line, thirty dollars; to each paymaster attached to districts, thirty dollars, and each assistant to such paymaster, ten dollars, in addition to his pay in the line; to each military agent, seventy-six dollars, and no other emolument; to each assistant military agent, eight dollars, in addition to his pay in the line, except the assistant military agents at Pittsburg and Niagara, who shall receive sixteen dollars, each, in addition to their pay in the line; to each colonel, seventy-five dollars; to each lieutenant colonel, sixty dollars; to each major, fifty dollars; to each surgeon, forty-five dollars; to each surgeon's mate, thirty dollars; to each adjutant, ten dollars, in addition to his pay in the line; to each captain, forty dollars; to each first lieutenant, thirty dollars; to each second lieutenant, twenty-five dollars; to each ensign, twenty dollars; to each cadet, ten dollars; to each sergeant major, nine dollars; to each sergeant, eight dollars; to each corporal, seven dollars; to each teacher of music, eight dollars; to each musician, six dollars; to each artificer, ten dollars; and to each private, five dollars.

SEC. 5. *And be it further enacted*, That the commissioned officers aforesaid, shall be entitled to receive, for their daily subsistence, the following number of rations of provisions: a colonel, six rations; a lieutenant colonel, five rations; a major, four rations; a captain, three rations; a lieutenant, two rations; an ensign, two rations; a surgeon, three rations; a surgeon's mate, two rations; a cadet, two rations or money in lieu thereof, at the option of the said officers and cadets at the posts, respectively, where the rations shall become due; and if at such posts supplies are not furnished by contract, then such allowance as shall be deemed equitable, having reference to former contracts,

and the position of the place in question: and each non-commissioned officer, musician, and private, one ration; to the commanding officers of each separate post, such additional number of rations as the President of the United States shall, from time to time, direct, having respect to the special circumstances of each post; to the women who may be allowed to any particular corps, not exceeding the proportion of four to a company, one ration each; to such matrons and nurses as may be necessarily employed in the hospital, one ration each; and to every commissioned officer who shall keep one servant, not a soldier of the line, one additional ration.

SEC. 6. *And be it further enacted*, That each ration shall consist of one pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey, or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles, to every hundred rations.

SEC. 7. *And be it further enacted*, That the following officers shall, whenever forage is not furnished by the public, receive at the rate of the following sums per month, in lieu thereof: each colonel, twelve dollars; each lieutenant colonel, eleven dollars; each major, ten dollars; each adjutant, six dollars; each surgeon, ten dollars; and each surgeon's mate, six dollars.

SEC. 8. *And be it further enacted*, That every non-commissioned officer, musician, and private, of the artillery and infantry, shall receive annually the following articles of uniform clothing, to wit: one hat, one coat, one vest, two pair of woollen and two pair of linen overalls, one coarse linen frock and trousers for fatigue clothing, four pair of shoes, four shirts, two pair of socks, two pair of short stockings, one blanket, one stock and clasp, and one pair of half gaiters: and the Secretary of War is hereby authorized to cause to be furnished, to the paymasters of the respective districts, such surplus of clothing as he may deem expedient; which clothing shall, under his direction, be furnished to the soldiers, when necessary, at the contract prices, and accounted for by them out of their arrears of monthly pay.

SEC. 9. *And be it further enacted*, That the President of the United States cause to be arranged the officers, non-commissioned officers, musicians, and privates of the several corps of troops now in the service of the United States, in such manner as to form and complete, out of the same, the corps aforesaid; and cause the supernumerary officers, non-commissioned officers, musicians, and privates, to be discharged from the service of the United States, from and after the first day of April next, or as soon thereafter as circumstances may permit.

SEC. 10. *And be it further enacted*, That the officers, non-commissioned officers, musicians, and privates, of the said corps, shall be governed by the rules and articles of war, which have been established by the United States in Congress assembled, or by such rules and articles as may be hereafter, by law, established: *Provided, nevertheless*, That the sentence of general courts martial, extending

to the loss of life, the dismissal of a commissioned officer, or which shall respect the general officer, shall, with the whole of the proceedings of such cases, respectively, be laid before the President of the United States, who is hereby authorized to direct the same to be carried into execution, or otherwise, as he shall judge proper.

SEC. 11. *And be it further enacted*, That the commissioned officers who shall be employed in the recruiting service, to keep up, by voluntary enlistment, the corps as aforesaid, shall be entitled to receive for every effective able-bodied citizen of the United States, who shall be duly enlisted by him for the term of five years, and mustered, of at least five feet six inches high, and between the ages of eighteen and thirty-five years, the sum of two dollars: *Provided, nevertheless*, That this regulation, so far as respects the height and age of the recruit, shall not extend to musicians or to those soldiers who may re-enlist into the service: *And provided, also*, That no person under the age of twenty-one years shall be enlisted by any officer, or held in the service of the United States, without the consent of his parent, guardian, or master, first had and obtained, if any he have; and if any officer shall enlist any person contrary to the true intent and meaning of this act, for every such offence he shall forfeit and pay the amount of the bounty and clothing which the person so recruited may have received from the public, to be deducted out of the pay and emoluments of such officer.

SEC. 12. *And be it further enacted*, That there shall be allowed and paid to each effective able-bodied citizen, recruited as aforesaid, to serve for the term of five years, a bounty of twelve dollars; but the payment of six dollars of the said bounty shall be deferred until he shall be mustered and have joined the corps in which he is to serve.

SEC. 13. *And be it further enacted*, That the said corps shall be paid in such manner, that the arrears shall, at no time, exceed two months, unless the circumstances of the case shall render it unavoidable.

SEC. 14. *And be it further enacted*, That if any officer non-commissioned officer, musician, or private, in the corps composing the peace establishment, shall be disabled by wounds or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as may be directed by the President of the United States for the time being: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed for the highest rate of disability half the monthly pay of such officer, at the time of his being disabled or wounded; and that no officer shall receive more than the half pay of a lieutenant colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

SEC. 15. *And be it further enacted*, That if any

commissioned officer in the military peace establishment of the United States, shall, while in the service of the United States, die, by reason of any wound received in actual service of the United States, and leave a widow, or, if no widow, a child or children under sixteen years of age, such widow or, if no widow, such child or children shall be entitled to and receive half the monthly pay, to which the deceased was entitled at the time of his death, for and during the term of five years. But in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the time, shall go to the child or children of such deceased officer: *Provided, always*, That such half pay shall cease on the decease of such child or children.

SEC. 16. *And be it further enacted*, That the paymaster shall perform the duties of his office, agreeably to the direction of the President of the United States, for the time being; and before he enters on the duties of the same, shall give bonds, with good and sufficient sureties, in such sums as the President shall direct, for the faithful discharge of his said office, and shall take an oath to execute the duties thereof with fidelity: and it shall moreover, be his duty to appoint from the line, with the approbation of the President of the United States, the several paymasters to districts, and assistants, prescribed by this act; and he is hereby authorized to require the said paymasters to districts, and assistants, to enter into bond, with good and sufficient surety, for the faithful discharge of their respective duties.

SEC. 17. *And be it further enacted*, That it shall be the duty of the military agents, designated by this act, to purchase, receive, and forward to their proper destination, all military stores, and other articles, for the troops in their respective departments, and all goods and annuities for the Indians, which they may be directed to purchase, or which shall be ordered into their care by the Department of War. They shall account with the Department of War, annually, for all the public property which may pass through their hands, and all the moneys which they may expend in discharge of the duties of their offices, respectively: previous to their entering on the duties of their offices, they shall give bonds, with sufficient sureties, in such sums as the President of the United States shall direct, for the faithful discharge of the trust reposed in them, and shall take an oath faithfully to perform the duties of their respective offices.

SEC. 18. *And be it further enacted*, That if any non-commissioned officer, musician, or private, shall desert the service of the United States, he shall, in addition to the penalties mentioned in the rules and articles of war, be liable to serve, for and during such a period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall and may be tried by a court martial, and punished, although the term of his enlistment may have elapsed previous to his being apprehended or tried.

SEC. 19. *And be it further enacted*, That every

Acts of Congress.

person who shall procure or entice a soldier in the service of the United States to desert, or who shall purchase from any soldier his arms, uniform clothing, or any part thereof; and every captain or commanding officer of any ship or vessel, who shall enter on board such ship or vessel, as one of his crew, knowing him to have deserted, or otherwise carry away any such soldier, or shall refuse to deliver him up to the orders of his commanding officer, shall, upon legal conviction, be fined at the discretion of any court having cognizance of the same, in any sum not exceeding three hundred dollars, or be imprisoned any term not exceeding one year.

SEC. 20. *And be it further enacted*, That every officer, non-commissioned officer, musician and private, shall take and subscribe the following oath or affirmation, to wit: "I, A. B., do solemnly swear, or affirm, (as the case may be,) that I will bear true faith and allegiance to the United States of America, and that I will serve them honestly and faithfully against their enemies or opposers, whomsoever; and that I will observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war."

SEC. 21. *And be it further enacted*, That whenever a general court martial shall be ordered, the President of the United States may appoint some fit person to act as judge advocate, who shall be allowed, in addition to his other pay, one dollar and twenty-five cents for every day he shall be necessarily employed in the duties of the said court; and in cases where the President shall not have made such appointment, the brigadier general or the president of the court may make the same.

SEC. 22. *And be it further enacted*, That where any commissioned officer shall be obliged to incur any extra expense in travelling and sitting on general courts martial, he shall be allowed a reasonable compensation for such extra expense actually incurred, not exceeding one dollar and twenty-five cents per day, to officers who are not entitled to forage, and not exceeding one dollar per day to such as shall be entitled to forage.

SEC. 23. *And be it further enacted*, That no non-commissioned officer, musician or private shall be arrested, or subject to arrest, or to be taken in execution for any debt under the sum of twenty dollars, contracted before enlistment, nor for any debt contracted after enlistment.

SEC. 24. *And be it further enacted*, That whenever any officer or soldier shall be discharged from the service, except by way of punishment for any offence, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles to a day.

SEC. 25. *And be it further enacted*, That to each commissioned officer, who shall be deranged by virtue of this act, there shall be allowed and paid, in addition to the pay and emoluments to which they will be entitled by law at the time of their discharge—to each officer whose term of service in any military corps of the United States

shall not have exceeded three years, three months' pay; to all other officers, so deranged, one month's pay of their grades, respectively, for each year of past service in the army of the United States, or in any regiment or corps now or formerly in the service thereof.

SEC. 26. *And be it further enacted*, That the President of the United States is hereby authorized and empowered, when he shall deem it expedient, to organize and establish a corps of engineers, to consist of one engineer, with the pay, rank, and emoluments of a major; two assistant engineers, with the pay, rank, and emoluments of captains; two other assistant engineers, with the pay, rank, and emoluments of first lieutenants; two other assistant engineers, with the pay, rank, and emoluments of second lieutenants; and ten cadets, with the pay of sixteen dollars per month, and two rations per day; and the President of the United States is, in like manner, authorized, when he shall deem it proper, to make such promotions in the said corps, with a view to particular merit, and without regard to rank, so as not to exceed one colonel, one lieutenant colonel, two majors, four captains, four first lieutenants, four second lieutenants, and so as that the number of the whole corps shall, at no time, exceed twenty officers and cadets.

SEC. 27. *And be it further enacted*, That the said corps when so organized, shall be stationed at West Point, in the State of New York, and shall constitute a military academy; and the engineers, assistant engineers, and cadets of the said corps, shall be subject, at all times, to do duty in such places, and on such service, as the President of the United States shall direct.

SEC. 28. *And be it further enacted*, That the principal engineer, and in his absence the next in rank, shall have the superintendence of the said military academy, under the direction of the President of the United States; and the Secretary of War is hereby authorized, at the public expense, under such regulations as shall be directed by the President of the United States, to procure the necessary books, implements, and apparatus, for the use and benefit of the said institution.

SEC. 29. *And be it further enacted*, That so much of any act or acts, now in force, as comes within the purview of this act, shall be, and the same is hereby, repealed; saving, nevertheless, such parts thereof as relate to the enlistments or term or service of any of the troops, which, by this act, are continued on the present military establishment of the United States.

Approved, March 16, 1802.

An Act for the accommodation of persons concerned in certain fisheries therein mentioned.

Be it enacted, &c., That, from and after the passing of this act, it shall be lawful for the collector of the customs for the district of Edenton, to permit any vessel having on board salt only, after due report and entry, and security given for the duties, to proceed, under the inspection of an officer of the customs, to any fishery, or other land-

ing place within the district, (to be designated in the permit,) and there discharge the same; subject, however, in all other respects, to the regulations, penalties, and provisions established by an act passed the second of March, in the year one thousand seven hundred and ninety-nine, entitled "An act to regulate the collection of duties on imports and tonnage."

SEC. 2. *And be it further enacted*, That every inspector, or other officer of the customs, while performing duty on board any such vessel, elsewhere than in the port to which such officer may properly belong, shall be entitled to receive from the master, or commander thereof, such provisions and other accommodations, (free from expense,) as are usually supplied to passengers, or as the state and condition of the vessel will admit.

SEC. 3. *And be it further enacted*, That if, by reason of the delivery of any cargo of salt, in manner aforesaid, more than fifteen working days, (computing from the date of entry,) shall, in the whole, be spent therein, the wages or compensation of such inspector, or other officer of the customs, who may be employed on board any vessel, in respect to which such term may be so exceeded, shall, for every day of such excess, be paid by the master or owner; and until paid, it shall not be lawful for the collector to grant a clearance, or to permit such vessel to depart from the district.

Approved, March 16, 1802.

An Act to amend an act, entitled "An act to lay and collect a direct tax within the United States."

Be it enacted, &c., That the collectors in each district shall prepare and transmit to their respective supervisors, correct lists of all lands within their respective collection districts, which by the act passed the fourteenth day of July, one thousand seven hundred and ninety-eight, entitled "An act to lay and collect a direct tax within the United States," they now are or hereafter shall be authorized to advertise for sale, specifying therein the persons in whose names the assessments were originally made, and the sums due thereon respectively; of which lists it shall be the duty of the supervisor, in all cases, to cause correct transcripts to be made out, and to cause to be inserted for five weeks successively, in one or more newspapers published within his district, one of which shall be the gazette in which are published, by authority, the laws of the State within whose limits the said district may be comprised, if there be any such gazette, a notification, that such transcripts are lodged at his office, and are open to the free inspection of all parties concerned; and also notifying, that the tax due upon the said lands may be paid to the collector within whose division the aforesaid lands are contained, or to the supervisor of the district, at any time within the space of six months from the date of such notification, and the time when, and places where sales will be made of all lands upon which any part of the direct tax shall remain due after the expiration of the time aforesaid.

7th Con.—42

SEC. 2. *And be it further enacted*, That in case of failure on the part of the owner or owners of the aforesaid lands to pay within the aforesaid time the full amount of tax due thereon, the collectors, under the direction, and with the approbation of their respective supervisors, shall immediately proceed to sell, at public sale, at the times and places mentioned in the advertisement of the supervisor, so much of the lands aforesaid as may be sufficient to satisfy the same, together with all the costs and charges of preparing lists, advertising, and notifying, as aforesaid, and of the sale.

SEC. 3. *And be it further enacted*. That the aforesaid tax, including all costs and charges as aforesaid, shall be and remain a lien upon all lands and other real estate on which the same has been assessed, until the tax due upon the same, including all costs and charges, shall have been collected, or until a sale shall have been effected, according to the provision of this act, or of the act to which this is a supplement.

SEC. 4. *And be it further enacted*, That in all cases wherein any tract of land may have been assessed in one assessment, which at the time when such assessment was made, was actually divided into two or more distinct parcels, each parcel having one or more distinct proprietor or proprietors, it shall be the duty of the collector to receive in manner aforesaid, from any proprietor or proprietors thus situated, his or their proportion of the tax due upon such tract; and thereupon, the land of the proprietor or proprietors, upon which the tax shall have been thus paid, shall be forever discharged from any part of the tax due under the original assessment.

SEC. 5. *And be it further enacted*, That in any case in which it may have happened that lands actually belonging to one person, may have been, or hereafter shall be, assessed in the name of another, and no sale of the same shall yet have been made, the same proceedings shall be had for the sale of the aforesaid lands, in order to raise the tax assessed in relation to the same, as is provided by the eleventh section of the act to which this is a supplement, in the case of lands assessed, the owner whereof is unknown; and such sale shall transfer and pass to the purchaser a good and effectual title.

SEC. 6. *And be it further enacted*, That the right of redemption reserved to the owners of lands and tenements sold under this act, or the act to which this is a supplement, shall in no wise be affected or impaired: *Provided always*, That the owners of lands which shall thus be sold after the passing of this act, in order to avail themselves of that right, shall make payment or tender of payment within two years from the time of sale, for the use of the purchaser, his heirs or assigns, of the amount of the said tax, costs, and charges, with interest for the same, at the rate of twenty-five per cent. per annum.

SEC. 7. *And be it further enacted*, That the Secretary of the Treasury shall be, and hereby is authorized and empowered, under the direction of the President of the United States, to augment

the compensation fixed by law for the Commissioner or for the principal and assistant assessors, or either of them, in any division where it shall be found necessary for carrying into effect the act entitled, "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," so, however, as that the Commissioner shall in no case receive more than five dollars per day, nor the principal or assistant assessor in any case receive more than three dollars per day, which additional compensation shall be subject to the same rules of settlement as are established by the act last aforesaid.

Approved, March 16, 1802.

An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Be it enacted, &c., That the following boundary line, established by treaty between the United States and various Indian tribes, shall be clearly ascertained, and distinctly marked in all such places as the President of the United States shall deem necessary, and in such manner as he shall direct, to wit: Beginning at the mouth of the Cayahoga river on Lake Erie, and running thence up the same to the portage between that and the Tuscaroras branch of the Muskingum; thence, down that branch, to the crossing place above Fort Lawrence; thence westwardly to a fork of that branch of the Great Miami river running into the Ohio, at or near which fork stood Laromie's store, and where commences the portage, between the Miami of the Ohio and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westwardly course to Fort Recovery, which stands on a branch of the Wabash; thence southwestwardly, in a direct line to the Ohio, so as to intersect that river, opposite the mouth of Kentucky or Cuttawa river; thence down the said river Ohio to the tract of one hundred and fifty thousand acres, near the rapids of the Ohio, which has been assigned to General Clarke, for the use of himself and his warriors; thence around the said tract, on the line of the said tract, till it shall again intersect the said river Ohio; thence down the same to a point opposite the high lands or ridge between the mouth of the Cumberland and Tennessee rivers; thence southeastwardly on the said ridge, to a point, from whence a southwest line will strike the mouth of Duck river; thence, still eastwardly on the said ridge, to a point forty miles above Nashville; thence northeast to Cumberland river; thence up the said river to where the Kentucky road crosses the same; thence to the Cumberland mountain, at the point of Campbell's line; thence in a southwestwardly direction along the foot of the Cumberland mountain to Emory's river; thence down the same to its junction with the river Clinch; thence down the river Clinch to Hawkins's line; thence along the same to a white oak, marked one mile tree; thence south fifty-one degrees west, three hundred and twenty-eight chains, to a large ash tree on the bank of the river Tennessee, one mile below Southwest

Point; thence up the northeast margin of the river Tennessee, (not including islands,) to the Wild Cat Rock, below Tellico block-house; thence in a direct line to the Militia Spring, near the Maryville road leading from Tellico; thence from the said spring to the Chilhowee mountain, by a line so to be run as will leave all the farms on Nine-mile creek to the northward and eastward of it, and to be continued along the Chilhowee mountain until it strikes Hawkins's line; thence along the said line to the great Iron mountain; and from the top of which a line to be continued in a southeastwardly course to where the most southern branch of Little river crosses the divisional line to Tugaloo river; thence along the South Carolina Indian boundary to and over the Oconna mountain, in a southwest course to Tugaloo river; thence in a direct line to the top of Currahee mountain, where the Creek line passes it; thence to the head or source of the main south branch of the Oconee river, called the Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with Oakmulgee, which forms the river Altamaha; thence down the middle of the said Altamaha, to the old line on the said river; and thence along the said old line to the river St. Mary's: *Provided always,* That if the boundary line between the said Indian tribes and the United States shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act shall be construed to apply to the said line so to be varied, in the same manner, as said provisions apply, by force of this act, to the boundary line hereinbefore recited.

SEC. 2. *And be it further enacted,* That if any citizen of, or other person resident in, the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range on any lands allotted or secured by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months.

SEC. 3. *And be it further enacted,* That if any such citizen, or other person, shall go into any country which is allotted, or secured by treaty as aforesaid, to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the Governor of some one of the United States, or the officer of the troops of the United States, commanding at the nearest post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months.

SEC. 4. *And be it further enacted,* That if any such citizen, or other person, shall go into any town, settlement, or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit

Acts of Congress.

robbery, larceny, trespass, or any other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any State, against a citizen of the United States; or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed; and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the Treasury of the United States: *Provided, nevertheless,* That no such Indian shall be entitled to any payment out of the Treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

SEC. 5. *And be it further enacted,* That if any such citizen, or other person, shall make a settlement on any lands belonging or secured, or granted by treaty with the United States, to any Indian tribe, or shall survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary, to remove from lands, belonging or secured by treaty, as aforesaid, to any Indian tribe, any such citizen, or other person, who has made, or shall hereafter make, or attempt to make a settlement thereon.

SEC. 6. *And be it further enacted,* That if any such citizen, or other person, shall go into any town, settlement, or territory, belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians in amity with the United States, such offender, on being thereof convicted, shall suffer death.

SEC. 7. *And be it further enacted,* That no such citizen, or other person, shall be permitted to reside at any of the towns, or hunting camps, of any of the Indian tribes as a trader, without a license, under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licenses for that purpose; which superintendent, or person authorized, shall, on application, issue such license, for a term not exceeding two years, to such trader, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions as are, or shall be made

for the government of trade and intercourse with the Indian tribes; and the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations, or restrictions, provided for the government of trade and intercourse with the Indian tribes; and shall put in suit such bonds as he may have taken on the breach of any condition therein contained.

SEC. 8. *And be it further enacted,* That any such citizen or other person, who shall attempt to reside in any town or hunting camp, of any of the Indian tribes, as a trader, without such license, shall forfeit all the merchandise offered for sale to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days.

SEC. 9. *And be it further enacted,* That if any such citizen, or other person, shall purchase, or receive of any Indian, in the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of clothing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days.

SEC. 10. *And be it further enacted,* That no such citizen, or other person, shall be permitted to purchase any horse of an Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person as the President shall appoint, is hereby authorized to grant, on the same terms, conditions, and restrictions, as other licenses are to be granted under this act: and any such person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country, shall make a particular return to the superintendent, or other person, from whom he obtained his license, of every horse purchased by him as aforesaid; describing such horses by their color, height, and other natural or artificial marks, under the penalty contained in their respective bonds; and every such person purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall, for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding thirty days; and every person who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licensed, as above, to purchase the same, shall forfeit the value of such horse.

SEC. 11. *And be it further enacted,* That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse to or from any Indian, excepting for and on account of the United States: and any person offending herein shall forfeit a sum not exceeding

Acts of Congress.

one thousand dollars, and be imprisoned not exceeding twelve months.

SEC. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the Constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention, directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: *Provided, nevertheless*, That it shall be lawful for the agent or agents of any State, who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the Commissioner or Commissioners, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claims to lands within such State, which shall be extinguished by the treaty.

SEC. 13. *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, That the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum.

SEC. 14. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any State or territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence, or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent or other person authorized as aforesaid, to make return of his doings to the President of the United

States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury: and, in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guaranty to the party injured an eventual indemnification: *Provided always*, That if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided, also*, That nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any State or district, of any Indian having so offended: *And provided, further*, That it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed, by any such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

SEC. 15. *And be it further enacted*, That the superior courts in each of the said territorial districts, and the circuit courts, and other courts of the United States of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be apprehended, or, agreeably to the provisions of this act, shall be brought for trial, shall have, and are hereby invested with full power and authority to hear and determine all crimes, offences, and misdemeanors, against this act; such courts proceeding therein in the same manner as if such crimes, offences, and misdemeanors had been committed within the bounds of their respective districts: and in all cases where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States, in their respective districts, shall have, and are hereby invested with, like power to hear and determine the same, any law to the contrary notwithstanding: And, in all cases where the punishment shall be death, it shall be lawful for the Governor of either of the territorial districts where the offender shall be apprehended, or into which he shall be brought for trial, to issue a commission of oyer and terminer to the superior judges of such district, who shall have full power and authority to hear and determine all such capital cases, in the same manner as the superior courts of such districts have in their ordinary sessions; and when the offender shall be apprehended, or brought for trial into any of the United States, except Kentucky or Tennessee, it shall be lawful for the President of the United States to issue a like commission to any one or more judges of the Supreme Court of the United States, and the judge of the district, in which such offender may have been apprehended or shall have been brought for trial; which judges, or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial

Acts of Congress.

and judgment in the same manner as such circuit court might or could do. And the district courts of Kentucky, Tennessee, and Maine, shall have jurisdiction of all crimes, offences, and misdemeanors committed against this act, and shall proceed to trial and judgment, in the same manner as the circuit courts of the United States.

SEC. 16. *And be it further enacted,* That it shall be lawful for the military force of the United States to apprehend every person who shall or may be found in the Indian country, over and beyond the said boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest convenient and safe route, to the civil authority of the United States, in some one of the three next adjoining States or districts, to be proceeded against in due course of law: *Provided,* That no person, apprehended by military force as aforesaid, shall be detained longer than five days after the arrest, and before removal. And all officers and soldiers who may have any such person or persons in custody, shall treat them with all the humanity which the circumstances will possibly permit; and every officer and soldier who shall be guilty of maltreating any such person, while in custody, shall suffer such punishment as a court martial shall direct: *Provided,* That the officer having custody of such person or persons shall, if required by such person or persons, conduct him or them to the nearest judge of the supreme or superior court of any State, who, if the offence is bailable, shall take proper bail if offered, returnable to the district court next to be holden in said district, which bail the said judge is hereby authorized to take, and which shall be liable to be estreated as any other recognizance for bail in any court of the United States; and if said judge shall refuse to act, or the person or persons fail to procure satisfactory bail, then the said person or persons are to be proceeded with according to the directions of this act.

SEC. 17. *And be it further enacted,* That if any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial in the same manner as if such crime or offence had been committed within such State or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.

SEC. 18. *And be it further enacted,* That the amount of fines and duration of imprisonment, directed by this act as a punishment for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court before whom

the trial shall be had; and that all fines and forfeitures which shall accrue under this act, shall be one half to the use of the informant, and the other half to the use of the United States; except where the prosecution shall be first instituted on behalf of the United States; in which case the whole shall be to their use.

SEC. 19. *And be it further enacted,* That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual States; or the unmolested use of a road from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair the said road, under the direction or orders of the Governor of said State, and of the navigation of the Tennessee river, as reserved and secured by treaty; nor shall this act be construed to prevent any person or persons travelling from Knoxville to Price's settlement, or to the settlement on Obed's river, (so called,) provided they shall travel in the trace or path which is usually travelled, and provided the Indians make no objection; but if the Indians object, the President of the United States is hereby authorized to issue a proclamation, prohibiting all travelling on said traces, or either of them, as the case may be; after which the penalties of this act shall be incurred by every person travelling or being found on said traces, or either of them, to which the prohibition may apply, within the Indian boundary, without a passport.

SEC. 20. *And be it further enacted.* That the President of the United States be, and he is hereby, authorized to cause to be clearly ascertained and distinctly marked, in all such places as he shall deem necessary, and in such manner as he shall direct, any other boundary lines between the United States and any Indian tribe, which now are, or hereafter may be, established by treaty.

SEC. 21. *And be it further enacted,* That the President of the United States be authorized to take such measures, from time to time, as to him may appear expedient to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes, anything herein contained to the contrary thereof notwithstanding.

SEC. 22. *And be it further enacted,* That this act shall be in force from the passage thereof; and so far as respects the proceedings under this act, it is to be understood that the act, entitled "An act to amend an act, entitled 'An act giving effect to the laws of the United States within the district of Tennessee,'" is not to operate.

Approved, March 30, 1802.

An Act making a partial appropriation for the support of Government during the year one thousand eight hundred and two.

Be it enacted, &c., That the sum of one hundred thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated, shall be, and the same hereby is, appropriated towards defraying the expenditure of the civil list, including

Acts of Congress.

the contingent expenses of the several departments, during the year one thousand eight hundred and two.

Approved, April 2, 1802.

An Act making appropriation for defraying the expense of a negotiation with the British Government, to ascertain the boundary line between the United States and Upper Canada.

Be it enacted, &c., That a sum not exceeding ten thousand dollars be, and the same is hereby, appropriated, payable out of any money in the Treasury not otherwise appropriated, to defray the expense which shall be incurred in negotiating with the Government of Great Britain, for ascertaining and establishing the boundary line between the United States and the British province of Upper Canada; when the President of the United States shall deem it expedient to commence such negotiation.

Approved, April 3, 1802.

An Act making an appropriation for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic.

Be it enacted, &c., That, for the payment of such demands as may be justly due for French vessels and property captured, and which must be restored or paid for, pursuant to the convention between the United States and the French Republic, there be appropriated a sum not exceeding three hundred and eighteen thousand dollars, to be paid, under the direction of the President of the United States, out of any public money in the Treasury not otherwise appropriated.

Approved, April 3, 1802.

An Act to repeal the Internal Taxes.

Be it enacted, &c., That, from and after the thirtieth day of June next, the internal duties on stills, and domestic distilled spirits, on refined sugars, licenses to retailers, sales at auction, carriages for the conveyance of persons, and stamped vellum, parchment, and paper, shall be discontinued, and all acts and parts of acts relative thereto, shall, from and after the said thirtieth day of June next, be repealed: *Provided,* That for the recovery and receipt of such duties as shall have accrued, and on the day aforesaid remain outstanding, and for the payment of drawbacks or allowances on the exportation of any of the said spirits or sugars, legally entitled thereto, and for the recovery and distribution of fines, penalties, and forfeitures, and the remission thereof, which shall have been incurred before and on the said day, the provisions of the aforesaid acts shall remain in full force and virtue.

Sec. 2. *And be it further enacted,* That the office of Superintendent of Stamps shall cease and be discontinued from and after the thirtieth day of April, one thousand eight hundred and two; after which day the Commissioner of the Revenue shall perform all the duties by law en-

joined on the said Superintendent of Stamps, which may be required in pursuance of this act: that the office of collectors of the internal duties shall continue in each collection district respectively, until the collection of the duties above mentioned shall have been completed in such district, and no longer, unless sooner discontinued by the President of the United States, who shall be and hereby is empowered, whenever the collection of the said duties shall have been so far completed in any district as to render, in his opinion, that measure expedient, to discontinue any of the said collectors, and to unite into one collection district any two or more collection districts, lying and being in the same State: that the office of supervisor shall continue in each State or district, respectively, until the collection of the duties above mentioned, together with the collection of the direct tax, shall have been completed in each State or district, and no longer; unless sooner discontinued by the President of the United States, who shall be and hereby is empowered, whenever the collection of the said duties and tax shall have been so far completed in any State or district as, in his opinion, to render that measure expedient, to discontinue any of the said offices; in which case, the collectors thereafter employed in the collection of the said duties and tax in such State or district shall be appointed and removed by the President alone, and shall be immediately accountable to the officers of the Treasury Department, under such regulations as may be established by the Secretary of the Treasury: that for the promoting of the collection of any of the above mentioned duties or tax, which may be outstanding after the said thirtieth day of June next, the President of the United States shall be, and he hereby is empowered, at any time hereafter, to make such allowance as he may think proper, in addition to that now allowed by law to any of the collectors of the said duties and tax, and the same from time to time to vary: *Provided,* That such additional allowance shall in no instance exceed, in the aggregate, five per cent. of the gross amount of the duties and tax outstanding on that day: and the office of Commissioner of the Revenue shall cease and be discontinued, whenever the collection of the duties and tax above mentioned shall be completed, unless sooner discontinued by the President of the United States, who shall be, and hereby is empowered, whenever the collection of the said duties and tax shall have been so far completed as, in his opinion, to render that measure expedient, to discontinue the said office, in which case the immediate superintendence of the collection of such parts of the said duties and tax as may then remain outstanding, shall be placed in such officer of the Treasury Department, as the Secretary for the time being, may designate: *Provided, however,* That all bonds, notes, or other instruments, which have been charged with the payment of a duty, and which shall, at any time prior to the said thirtieth day of June, have been written or printed upon vellum, parchment, or paper, not stamped or marked according to law, or upon vellum, parchment,

Acts of Congress.

or paper stamped or marked at a lower rate of duty, than is, by law, required for such bond, note, or other instrument, may be presented to any collector of the customs within the State; and where there is no such collector, to the marshal of the district, whose duty it shall be, upon the payment of the duty with which such instrument was chargeable, together with the additional sum of ten dollars, for which duty and additional sum the said collector or marshal shall be accountable to the Treasury of the United States, to endorse upon some part of such instrument his receipt for the same; and thereupon the said bond, note, or other instrument shall be, to all intents and purposes, as valid and available to the person holding the same, as if it had been or were stamped, counterstamped, or marked as by law required; anything in any act to the contrary, notwithstanding.

SEC. 3. *And be it further enacted*, That owners of stills, whose licenses to distil shall not have expired on the thirtieth day of June next, shall at their option, pay either the whole duty which would have accrued on their stills on account of such licenses, or the duty which would have accrued on said stills, on the day aforesaid, if they had taken licenses ending on that day: the owners of snuff mills, whose licenses have not expired on the first day of June, one thousand seven hundred and ninety-six, shall be allowed a deduction from the duties incurred on the same, proportionate to the time thus remaining unexpired on such licenses: that the several banks, which may have agreed to pay the annual compensation of one per cent. on their dividends, in lieu of the stamp duty on the notes issued by them, shall pay only at the rate of one per cent. per annum on such dividends, to the thirtieth day of June next: that retailers of wines and spirits, who may take licenses, after the passing of this act, shall pay for such licenses only in proportion to the time which may intervene between the obtaining such licenses and the thirtieth day of June next: and that the owners of carriages for the conveyance of persons, who may enter the same after the passing of this act, and before the thirtieth day of June next, shall pay the duty for the same only to the said thirtieth day of June.

SEC. 4. *And be it further enacted*, That the supervisor of the Northwest district shall, in addition to the same commissions on the product of all the internal duties collected in his district, as heretofore have been allowed to the supervisor of Ohio, be allowed an annual salary of five hundred dollars, and at the rate of three hundred dollars per annum for clerk hire.

SEC. 5. *And be it further enacted*, That the following extra allowances for clerk hire, shall be made for one year, to the supervisors of the following districts, as a full compensation for the additional duties arising from the settlement of accounts of certain inspectors of the internal revenues, whose offices have been suppressed by the President of the United States; that is to say, to each of the supervisors of Massachusetts, Pennsylvania, Maryland, North Carolina, and South

Carolina, the sum of eight hundred dollars, and to the supervisor of Virginia, the sum of five hundred dollars.

SEC. 6. *And be it further enacted*, That so much of any act as directs an annual entry of stills to be made, be, and the same hereby is, repealed.

SEC. 7. *And be it further enacted*, That the certificates accompanying foreign distilled spirits, wines, and teas, which are now furnished by the supervisors to the inspectors of the ports, shall, from and after the aforesaid thirtieth day of June, be furnished by such collectors of the customs, as may be designated by the Secretary of the Treasury. And it shall be the duty of the inspectors to account with such collectors, for the application of such certificates, in like manner, and under the same regulations as heretofore they have accounted with the supervisors.

SEC. 8. *And be it further enacted*, That, for preparing and issuing the certificates, the collectors performing that duty shall be entitled to, and receive, the same compensation as heretofore has been allowed to the supervisors, respectively.

SEC. 9. *And be it further enacted*, That all persons who shall, on or after the thirtieth day of June next, have any blank vellum, parchment, or paper, which has been stamped by the superintendent of stamps and counter-stamped by the commissioner of the revenue, and on which a duty has been paid to the use of Government, shall be entitled to receive from such collector or collectors of the customs, or other revenue officer in the respective States or districts as may be designated for that purpose by the Secretary of the Treasury, the value of the said stamps, after deducting, in all cases, seven and an half per cent., and the said officers are hereby authorized to pay the same: *Provided*, The said blank vellum, parchment, or paper, be presented within four months after the thirtieth day of June next.

Approved, April 6, 1802.

An Act authorizing the erection of certain light-houses, and for other purposes.

Be it enacted, &c., That, under the direction of the Secretary of the Treasury, there shall be purchased, for the use of the United States, the land whereon lately stood the light-house on Gurnet Point, and so much land adjoining thereto, as may be sufficient for vaults and any other purposes necessary for the better support of the said light-house.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized, at his discretion, to procure a new lantern or lanterns, with suitable distinctions, and to cause convenient vaults to be erected; and the said light-house, on the Gurnet, at the entrance on Plymouth harbor, to be rebuilt.

SEC. 3. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized, to cause to be rebuilt, of such height as he may deem expedient, the light-house now situated on the Eastern end of Newcastle

Acts of Congress.

Island, at the entrance of Piscataqua river, either on the land owned by the United States, or on Pollock Rock: *Provided*, That if built on Pollock Rock, the Legislature of New Hampshire shall vest the property of the said rock in the United States, and cede the jurisdiction of the same.

SEC. 4. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized and directed to cause a sufficient light-house to be erected on Lynde's point, at the mouth of Connecticut river, in the State of Connecticut, and to appoint a keeper, and otherwise provide for such light-house, at the expense of the United States: *Provided*, That sufficient land for the accommodation of such light-house can be purchased at a reasonable price, and the Legislature of the State of Connecticut shall cede the jurisdiction over the same to the United States.

SEC. 5. *And be it further enacted*, That the Secretary of the Treasury be directed to cause proper light-houses to be built, and buoys to be placed, in the situations necessary for the navigation of the sound between Long Island and the main; and be, to that effect, authorized to cause, by proper and intelligent persons, a survey to be taken of the said sound, as far as may be requisite; and to appoint keepers, and otherwise provide for such light-houses, at the expense of the United States: *Provided*, That sufficient land for the accommodation of the respective light-houses can be purchased at a reasonable price; and that the Legislatures of Rhode Island, Connecticut, and New York, shall, respectively, cede the jurisdiction over the same to the United States.

SEC. 6. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized and directed to cause a sufficient light-house to be erected on the south point of Cumberland island, at the entrance of St. Mary's river, within the State of Georgia; and that, under the direction of the said Secretary, there shall be purchased, if the same cannot otherwise be obtained, sufficient land for the erection of the said light-house, and accommodations for the better support thereof: *Provided*, That the Legislature of Georgia shall cede the jurisdiction over the same to the United States.

SEC. 7. *And be it further enacted*, That there shall be, and hereby are, appropriated, for the reimbursement of the merchants of Plymouth and Duxbury, for moneys expended by them in erecting a temporary light on the Gurnet, a sum not exceeding two hundred and seventy dollars; for the rebuilding the light-house on the said Gurnet, a sum not exceeding two thousand five hundred dollars; for rebuilding the light-house on the eastern end of Newcastle island, a sum not exceeding four thousand dollars; and for the erection of the said light-house on said Lynde's point, a sum not exceeding two thousand five hundred dollars; for the erection of a light-house on Cumberland South Point, a sum not exceeding four thousand dollars; and for taking the survey, and for erecting light-houses and placing buoys in the sound, a sum not exceeding eight thousand dollars

to be paid out of any moneys which may be in the Treasury, not otherwise appropriated.

SEC. 8. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury, under the direction of the President of the United States, to cause to be expended, in repairing and erecting public piers in the river Delaware, a sum not exceeding thirty thousand dollars; and that the same be paid out of any moneys in the Treasury, not otherwise appropriated: *Provided*, That the jurisdiction of the site where any such piers may be erected, shall be first ceded to the United States, according to the conditions in such case by law provided.

Approved, April 6, 1802.

An Act for the relief of the Marshals of certain districts therein mentioned.

Be it enacted, &c., That the Secretary of the Treasury be, and he hereby is, authorized and directed to apportion to the several marshals of the districts of Virginia, Maryland, and Pennsylvania, respectively, who have been employed or concerned in taking the late census, the compensation allowed by the "Act providing for the second census or enumeration of the inhabitants of the United States," according to the service each may have performed.

Approved, April 6, 1802.

An Act declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned.

Be it enacted, &c., That the assent of Congress is hereby given, and declared, to an act of the General Assembly of Virginia, entitled "An act to amend, and reduce into one, the several acts of Assembly for improving the navigation of Appomattox river from Broadway to Pocahontas bridge."

Approved, April 14, 1802.

An Act to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine.

Be it enacted, &c., That an act, entitled "An act to augment the salaries of the officers therein mentioned," be, and the same is hereby, revived and continued in force for and during the term of two years from the commencement of the present year.

Approved, April 14, 1802.

An act to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures."

Be it enacted, &c., That the second section of the act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," shall not be deemed to operate upon unregistered ships or vessels owned

Acts of Congress.

by the citizens of the United States at the time of passing the said act, in those cases where such ship or vessel at that time possessed a sea-letter or other regular document, issued from a custom-house of the United States, proving such ship or vessel to be American property.

SEC. 2. *And be it further enacted,* That, whenever satisfactory proof shall be made to the Secretary of the Treasury that any unregistered ship or vessel was in fact the property, in whole, of a citizen or citizens of the United States, on the thirteenth day of May, in the year one thousand eight hundred, that the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be issued to such ship or vessel a certificate, which shall entitle such unregistered ship or vessel to the same privileges which are hereinbefore granted to unregistered ships or vessels owned by citizens of the United States, and carrying a sea-letter or other regular document, issued from a custom-house of the United States before the passing of the said act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures."

Approved, April 14, 1802.

An Act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.

Be it enacted, &c., That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise.

First. That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the States, or of the Territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may at the time be a citizen or subject.

Secondly. That he shall, at the time of the application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the State or Territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction that during that time he has behaved as a man of good moral character, at-

tached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same: *Provided,* That the oath of the applicant shall, in no case, be allowed to prove his residence.

Fourthly. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided,* That no alien who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States: *Provided, also,* That any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the State or Territory where such court is at the time held; and on his declaring on oath, or affirmation, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof: *And provided, also,* That any alien who has resided within the limits and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

SEC. 2. *Provided, also, and be it further enacted,* That, in addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the passing of this act, shall, in order to become citizens of the United States, make registry and obtain certificates in

Acts of Congress.

the following manner, to wit: every person desirous of being naturalized shall, if of the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the Territorial districts of the same, or of a particular State; and such report shall ascertain the name, birth-place, age, nation, and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement; and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate, under his hand and seal of office, of such report and registry; and for receiving and registering each report of any individual or family, he shall receive fifty cents; and for each certificate granted pursuant to this act, to an individual or family, fifty cents: and such certificate shall be exhibited to the court by every alien who may arrive in the United States after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.

SEC. 3. *And whereas*, doubts have arisen whether certain courts of record in some of the States are included within the description of district or circuit courts: *Be it further enacted*, That every court of record in any individual State, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of this act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States, under the laws thereof, being under the age of twenty-one years, at the time of their parent's being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States, and the children of persons who now are or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the rights of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided, also*, That no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain, during the late war, shall be admitted a citizen, as aforesaid, without the consent of the Legislature of the State in which such person was proscribed.

SEC. 5. *And be it further enacted*, That all acts

heretofore passed respecting naturalization, be, and the same are, hereby repealed.

Approved, April 14, 1802.

An Act in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Be it enacted, &c., That from and after the passing of this act, and until the first day of January next, it shall be lawful for the holders or proprietors of warrants heretofore granted in consideration of military services, or register's certificates of fifty acres, or more, granted, or hereafter to be granted, agreeable to the third section of an act, entitled "An act in addition to an act, entitled an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," approved the first day of March, one thousand eight hundred, to register and locate the same, in the same manner, and under the same restrictions, as might have been done before the first day of January last: *Provided*, That persons holding register's certificates for a less quantity than one hundred acres, may locate the same on such parts of fractional townships, as shall, for that purpose, be divided by the Secretary of the Treasury into lots of fifty acres each.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of War to receive claims to lands for military services, and claims for duplicates of warrants issued from his office, or from the land office of Virginia, or of plats and certificates of surveys founded on such warrants, suggested to have been lost or destroyed, until the first day of January next, and no longer; and, immediately thereafter, to report the same to Congress, designating the numbers of claims of each description, with his opinion thereon.

Approved, April 26, 1802.

An Act to amend the Judicial System of the United States.

Be it enacted, &c., That, from and after the passing of this act, the Supreme Court shall be holden by the justices thereof, or any four of them, at the city of Washington, and shall have one session in each and every year, to commence on the first Monday of February, annually, and that if four of the said justices shall not attend within ten days after the time hereby appointed for the commencement of the said session, the business of the said court shall be continued over till the next stated session thereof: *Provided, always*, That any one or more of the said justices, attending as aforesaid, shall have power to make all necessary orders touching any suit, action, writ of error, process, pleadings, or proceedings, returned to the said court or depending therein, preparatory to the hearing, trial, or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings. And so much of the act, entitled "An act to establish the judicial courts of the United

States," passed the twenty-fourth day of September, seventeen hundred and eighty-nine, as provides for the holding a session of the Supreme Court of the United States on the first Monday of August, annually, is hereby repealed.

SEC. 2. *And be it further enacted,* That it shall be the duty of the associate justices resident in the fourth circuit formed by this act, to attend at the city of Washington on the first Monday of August next, and on the first Monday of August each and every year thereafter, who shall have power to make all necessary orders touching any suit, action, appeal, writ of error, process, pleadings, or proceedings, returned to the said court, or depending therein, preparatory to the hearing, trial, or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings; and that all writs and process may be returnable to the said court on the said first Monday in August, in the same manner as to the session of the said court hereinbefore directed to be holden on the first Monday of February, and may also bear teste on the said first Monday in August, as though a session of the said court was holden on that day; and it shall be the duty of the Clerk of the Supreme Court to attend the said justice on the said first Monday of August, in each and every year, who shall make due entry of all such matters and things as shall or may be ordered as aforesaid by the said justice; and at each and every such August session, all actions, pleas, and other proceedings relative to any cause, civil or criminal, shall be continued over to the ensuing February session.

SEC. 3. *And be it further enacted,* That all actions, suits, process, pleadings, and other proceedings, of what nature or kind soever, civil or criminal, which were continued from the Supreme Court of the United States, which was begun and holden on the first Monday of December last, to the next court to have been holden on the first Monday of June, under the act which passed on the thirteenth day of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the courts of the United States;" and all writs, process, and proceedings, as aforesaid, which are or may be made returnable to the same June session, shall be continued, returned to, and have day in the session to be holden by this act, on the first Monday of August next; and such proceedings shall be had thereon, as is hereinbefore provided.

SEC. 4. *And be it further enacted,* That the districts of the United States (excepting the districts of Maine, Kentucky, and Tennessee) shall be formed into six circuits, in manner following:

The districts of New Hampshire, Massachusetts, and Rhode Island, shall constitute the first circuit;

The districts of Connecticut, New York, and Vermont, shall constitute the second circuit;

The districts of New Jersey and Pennsylvania, shall constitute the third circuit;

The districts of Maryland and Delaware, shall constitute the fourth circuit;

The districts of Virginia and North Carolina, shall constitute the fifth circuit;

And the districts of South Carolina and Georgia, shall constitute the sixth circuit.

And there shall be holden annually in each district of the said circuits two courts, which shall be called circuit courts. In the first circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the said circuit; and the district judge of the district where such court shall be holden. And the sessions of the said court, in the district of New Hampshire, shall commence on the nineteenth day of May, and the second day of November, annually; in the district of Massachusetts, on the first day of June, and the twentieth day of October, annually; in the district of Rhode Island, on the fifteenth day of June, and the fifteenth day of November, annually.

In the second circuit, the said circuit court shall consist of the senior associate justice of the Supreme Court residing within the fifth circuit, and the district judge of the district, where such court shall be holden.

And the sessions of the said court in the district of Connecticut, shall commence on the thirteenth day of April, and the seventeenth day of September, annually; in the district of New York, on the first day of April, and the first day of September, annually; in the district of Vermont, on the first day of May, and the third day of October, annually.

In the third circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the said circuit, and the district judge of the district where such court shall be holden; and the sessions of the said court, in the district of New Jersey, shall commence on the first day of April, and the first day of October, annually; in the district of Pennsylvania, on the eleventh day of April, and the eleventh day of October, annually.

In the fourth circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the said circuit, and the district judge of the district where such court shall be holden; and the sessions of the said court in the district of Delaware, shall commence on the third day of June, and the twenty-seventh day of October, annually; in the district of Maryland, on the first day of May, and the seventh day of November, annually; to be holden hereafter at the city of Baltimore only.

In the fifth circuit, the circuit court shall consist of the present Chief Justice of the Supreme Court and the district judge of the district where such court shall be holden; and the sessions of the said court in the district of Virginia, shall commence on the twenty-second day of May, and the twenty-second day of November, annually; in the district of North Carolina, on the fifteenth day of June, and the twenty-ninth day of December, annually.

In the sixth circuit, the said circuit court shall consist of the junior associate justice of the Supreme Court in the fifth circuit, and the district judge of the district where such court shall be holden; and the sessions of the said court in the

district of South Carolina shall commence at Charleston on the twentieth day of May, and at Columbia on the twentieth day of November, annually; in the district of Georgia, on the sixth day of May at Savannah, and on the fourteenth day of December hereafter at Louisville, annually: *Provided*, That, when only one of the judges hereby directed to hold the circuit courts shall attend, such circuit court may be held by the judge so attending: and that when any of the said days shall happen on a Sunday, then the said court hereby directed to be holden on such day, shall be holden on the next day thereafter; and the circuit courts, constituted by this act, shall be held at the same place or places in each district of every circuit, as by law they were respectively required to be held previous to the thirteenth day of February, one thousand eight hundred and one, excepting as is hereinbefore directed. And none of the said courts shall be holden until after the first day of July next; and the clerk of each district court shall be also clerk of the circuit court in such district, except as is hereinafter excepted.

SEC. 5. *And be it further enacted*, That on every appointment which shall be hereafter made of a chief justice or associate justice, the said chief justice and associate justices shall allot themselves among the aforesaid circuits as they shall think fit, and shall enter such allotment on record. And in case no such allotment shall be made by them at their session next succeeding such appointment, and also after the appointment of any judge, as aforesaid, and before any allotment shall have been made, it shall and may be lawful for the President of the United States to make such allotment as he shall deem proper, which allotment, made in either case, shall be binding, until another allotment shall be made; and the circuit courts constituted by this act, shall have all the power, authority, and jurisdiction within the several districts of their respective circuits, that, before the thirteenth day of February, one thousand eight hundred and one, belonged to the circuit courts of the United States; and in all cases which, by appeal or writ of error, are, or shall be, removed from a district to a circuit court, judgment shall be rendered in conformity to the opinion of the judge of the Supreme Court presiding in such circuit court.

SEC. 6. *And be it further enacted*, That whenever any question shall occur before a circuit court upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court, at their next session to be held thereafter; and shall, by the said court, be finally decided. And the decision of the Supreme Court, and their order in the premises, shall be remitted to the circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided*, That nothing herein contained shall prevent the cause from

proceeding, if, in the opinion of the court, farther proceedings can be had, without prejudice to the merits: *And provided, also*, That imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment.

SEC. 7. *And be it further enacted*, That the district of North Carolina shall be divided into three districts, one to consist of all that part thereof which, by the laws of the State of North Carolina, now forms the districts of Edenton and Halifax, which district shall be called the district of Albemarle, and a district court in and for the same shall be holden at Edenton by the district judge of North Carolina, on the third Tuesday in April, on the third Tuesday in August, and on the third Tuesday in December, in each and every year; one other to be called the district of Pamptico, and to consist of all that part of North Carolina which, by the laws of the said State, now forms the districts of Newbern and Hillsborough, together with all that part of the district of Wilmington which lies to the northward and eastward of New river; for which district of Pamptico, a district court shall be holden at Newbern, by the district judge last aforesaid, on the second Tuesday in April, on the second Tuesday in August, and on the second Tuesday in December in each and every year; and one other, to consist of the remaining part of the said district of North Carolina, and to be called the district of Cape Fear, in and for which a district court shall be holden at Wilmington by the district judge last aforesaid, on the first Tuesday in April, on the first Tuesday in August, and on the first Tuesday in December, in each and every year; which said district courts, hereby directed to be holden, shall respectively have and exercise, within their several districts, the same powers, authority, and jurisdiction, which are vested, by law, in the district courts of the United States.

SEC. 8. *And be it further enacted*, That the circuit court and district courts for the district of North Carolina shall appoint clerks for the said courts respectively, which clerks shall reside and keep the records of the said courts at the places of holding the courts whereto they shall respectively belong, and shall perform the same duties and be entitled to and receive the same emoluments and fees, respectively, which are by law established for the clerks of the circuit and district courts of the United States respectively.

SEC. 9. *And be it further enacted*, That all actions, causes, pleas, process, and other proceedings relative to any cause, civil or criminal, which shall be returnable to, or depending in the several circuit or district courts of the United States on the first day of July next, shall be, and are hereby declared to be, respectively transferred, returned and continued to the several circuit and district courts constituted by this act, at the times hereinbefore and hereinafter appointed for the holding of each of the said courts, and shall be heard, tried, and determined therein in the same manner and with the same effect, as if no change

Acts of Congress.

had been made in the said courts. And it shall be the duty of the clerk of each and every court hereby constituted, to receive and to take into his safe-keeping the writs, process, pleas, proceedings, and papers, of all those causes and actions which, by this act, shall be transferred, returned, or continued to such court, and also all the records and office papers of every kind respectively belonging to the courts abolished by the repeal of the act, entitled "An act to provide for the more convenient organization of the courts of the United States," and from which the said causes shall have been transferred as aforesaid.

SEC. 10. *And be it further enacted*, That all suits, process, pleadings, and other proceedings, of what nature or kind soever, depending in the circuit court in the district of Ohio, and which shall have been, or may hereafter be commenced within the Territory of the United States Northwest of the river Ohio, in the said court, shall, from and after the first day of July next, be continued over, returned, and made cognizable, in the superior court of the said Territory next thereafter to be holden, and all actions, suits, process, pleadings, and other proceedings, as aforesaid depending in the circuit court of the said district, and which shall have been or may hereafter be commenced within the Indiana Territory, in said court, shall, from and after the first day of July next, be continued over, returned and made cognizable in the superior court of the said Indiana Territory, next thereafter to be holden.

SEC. 11. *And be it further enacted*, That in all cases in which proceedings shall, on the said first day of July next, be pending under a commission of bankruptcy issued in pursuance of the aforesaid act, entitled "An act to provide for the more convenient organization of the courts of the United States," the cognizance of the same shall be, and hereby is, transferred to, and vested in, the district judge of the district within which such commission shall have issued, who is hereby empowered to proceed therein, in the same manner and to the same effect, as if such commission of bankruptcy had been issued by his order.

SEC. 12. *And be it further enacted*, That, from and after the first day of July next, the district judges of Kentucky and Tennessee shall be, and hereby are, severally entitled to a salary of fifteen hundred dollars annually, to be paid quarter yearly at the Treasury of the United States.

SEC. 13. *And be it further enacted*, That the marshals and attorneys of the United States, for the districts which were not divided, or within the limits of which new districts were not erected by the act entitled "An act to provide for the more convenient organization of the courts of the United States," passed the thirteenth day of February, one thousand eight hundred and one, shall continue to be marshals and attorneys for such districts respectively, unless removed by the President of the United States, and in all other districts which were divided or within the limits of which new districts were erected by the last recited act, the President of the United States be, and hereby is, empowered from and after the first

day of July next to discontinue all such supernumerary marshals and district attorneys of the United States in such districts, respectively, as he shall deem expedient, so that there shall be but one marshal and district attorney to each district; and every marshal and district attorney who shall be continued in office, or appointed by the President of the United States in such districts, shall have and exercise the same powers, perform the same duties, give the same bond with sureties, take the same oath, be subject to the same penalties and regulations as are, or may be prescribed by law, in respect to the marshals and district attorneys of the United States. And every marshal and district attorney who shall be so discontinued as aforesaid shall be holden to deliver over all papers, matters, and things, in relation to their respective offices, to such marshals and district attorneys, respectively, who shall be so continued or appointed as aforesaid in such district, in the same manner as is required by law in cases of resignation or removal from office.

SEC. 14. *And be it further enacted*, That there shall be appointed by the President of the United States, from time to time, as many general commissioners of bankruptcy, in each district of the United States, as he may deem necessary; and upon petition to the judge of a district court for a commission of bankruptcy, he shall proceed as is provided in and by an act, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and appoint, not exceeding three of the said general commissioners as commissioners of the particular bankrupt petitioned against; and the said commissioners, together with the clerk, shall each be allowed, as a full compensation for their services, when sitting and acting under their commissions, at the rate of six dollars per day for every day which they may be employed in the same business, to be apportioned among the several causes on which they may act on the same day, and to be paid out of the respective bankrupt's estates: *Provided*, That the commissioners, who may have been, or may be appointed in any district before notice shall be given of the appointment of commissioners for such district by the President in pursuance of this act, and who shall not then have completed their business, shall be authorized to proceed and finish the same upon the terms of their original appointment.

SEC. 15. *And be it further enacted*, That the stated session of the district court, for the district of Virginia, heretofore directed to be holden in the city of Williamsburg, shall be holden in the town of Norfolk, from and after the first day of July next; and the stated sessions of the district court for the district of Maryland, shall hereafter be holden in the city of Baltimore only; and in the district of Georgia, the stated sessions of the district court shall be held in the city of Savannah only.

SEC. 16. *And be it further enacted*, That for the better establishment of the courts of the United States within the State of Tennessee, the said State shall be divided in two districts, one to con-

sist of that part of said State, which lies on the east side of Cumberland mountain, and to be called the district of East Tennessee, the other to consist of the remaining part of said State, and to be called the district of West Tennessee.

SEC. 17. *And be it further enacted,* That the district judge of the United States, who shall hereafter perform the duties of district judge, within the State of Tennessee, shall annually hold four sessions, two at Knoxville, on the fourth Monday of April, and the fourth Monday of October, in and for the district of East Tennessee, and two at Nashville, on the fourth Monday of May, and the fourth Monday of November, in and for the district of West Tennessee.

SEC. 18. *And be it further enacted,* That there shall be a clerk for each of the said districts of East and West Tennessee, to be appointed by the judge thereof, who shall reside and keep the records of the said courts at the places of holding the courts, whereto they respectively shall belong, and shall perform the same duties, and be entitled to, and receive the same emoluments and fees which are established by law for the clerks of the district courts for the United States, respectively.

SEC. 19. *And be it further enacted,* That there shall be appointed, in and for each of the districts of East and West Tennessee, a marshal, whose duty it shall be to attend the district courts hereby established, and who shall have and exercise within such district, the same powers, perform the same duties, be subject to the same penalties, give the same bond with sureties, take the same oath, be entitled to the same allowance, as a full compensation for all extra services, as hath heretofore been allowed to the marshal of the district of Tennessee, by a law, passed the twenty-eighth day of February, one thousand seven hundred and ninety-nine, and shall receive the same compensation and emoluments, and in all respects be subject to the same regulations as are now prescribed by law, in respect to the marshals of the United States heretofore appointed: *Provided,* That the marshals of the districts of East and West Tennessee, now in office, shall, during the periods for which they have been appointed, unless sooner removed by the President of the United States, be and continue marshals for the several districts hereby established, within which they respectively reside.

SEC. 20. *And be it further enacted,* That there shall be appointed, for each of the districts of East and West Tennessee, a person learned in the law, to act as attorney for the United States within such district; which attorney shall take an oath or affirmation for the faithful performance of the duties of his office, and shall prosecute, in such district, all delinquencies, for crimes and offences, cognizable under the authority of the United States, and all civil actions or suits, in which the United States shall be concerned; and shall be entitled to the same allowance, as a full compensation for all extra services, as hath heretofore been allowed to attorneys of the district of Tennessee, by a law passed the twenty-eighth day of February, one thousand seven hundred and ninety-

nine, and shall receive such compensation, emoluments, and fees, as by law are or shall be allowed to the district attorneys of the United States, respectively: *Provided,* That the district attorneys of East and West Tennessee, now in office, shall severally and respectively be attorneys for those districts, within which they reside, until removed by the President of the United States.

SEC. 21. *And be it further enacted,* That all actions, suits, process, pleadings, and proceedings, of what nature or kind soever, which shall be depending or existing in the sixth circuit of the United States, within the circuit courts of the districts of East and West Tennessee, shall be, and hereby are, continued over to the district courts established by this act, in manner following, that is to say: All such as shall on the first day of July next be depending and undetermined, or shall then have been commenced, and made returnable before the circuit court of East Tennessee, to the next district court hereby directed to be holden within and for the district of East Tennessee; all such as shall be depending and undetermined, or shall have been commenced and made returnable before the circuit court of West Tennessee, to the next district court hereby directed to be holden within and for the district of West Tennessee; and all the said suits shall be equally regular and effectual, and shall be proceeded in in the same manner as they could have been if the law authorizing the establishment of the sixth circuit of the United States had not been repealed.

SEC. 22. *And be it further enacted,* That the next session of the district court for the district of Maine shall be holden on the last Tuesday in May next; and that the session of the said court, heretofore holden on the third Tuesday of June, annually, shall hereafter be holden, annually, on the last Tuesday in May.

SEC. 23. *And be it further enacted,* That all writs and process which shall have been issued, and all recognizances returnable, and all suits and other proceedings which have been continued to the said district court on the third Tuesday in June next, shall be returned and held continued to the said last Tuesday of May next.

SEC. 24. *And be it further enacted,* That the chief judge of the district of Columbia shall hold a district court of the United States, in and for the said district, on the first Tuesday of April and on the first Tuesday of October in every year; which court shall have and exercise, within the said district, the same powers and jurisdiction which are by law vested in the district courts of the United States.

SEC. 25. *And be it further enacted,* That in all suits in equity, it shall be in the discretion of the court, upon the request of either party, to order the testimony of the witnesses therein to be taken by depositions; which depositions shall be taken in conformity to the regulations prescribed by law for courts of the highest original jurisdiction in equity, in cases of a similar nature, in that State in which the court of the United States may be holden: *Provided, however,* That nothing herein contained shall extend to the circuit courts which may be

Acts of Congress.

holden in those States in which testimony in chancery is not taken by deposition.

SEC. 26. *And be it further enacted*, That there shall be a clerk for the district court of Norfolk, to be appointed by the judge thereof, which clerk shall reside and keep the records of the said court at Norfolk, aforesaid, and shall perform the same duties, and be entitled to and receive the same fees and emoluments, which are established by law for the clerks of the district courts of the United States.

SEC. 27. *And be it further enacted*, That, from and after the first day of July next, there shall be holden, annually, in the district of Vermont, two stated sessions of the district court, which shall commence on the tenth day of October at Rutland, and on the seventh day of May at Windsor, in each year; and when either of the said days shall happen on a Sunday, the said court, hereby directed to be holden on such day, shall be holden on the day next thereafter.

SEC. 28. *And be it further enacted*, That the act, entitled "An act altering the time of holding the district court in Vermont," and so much of the second section of the act, entitled "An act giving effect to the laws of the United States within the State of Vermont," as provides for the holding four sessions, annually, of the said district court in said district, from and after the first day of July next, be, and hereby are, repealed.

SEC. 29. *And be it further enacted*, That the clerk of the said district court shall not issue a process to summon, or cause to be returned to any session of the said district court, a grand jury, unless by special order of the district judge, and at the request of the district attorney; nor shall he cause to be summoned or returned a petit jury to such sessions of the said district court, in which there shall appear to be no issue proper for the trial by jury, unless by special order of the judge, as aforesaid. And it shall be the duty of the circuit court in the district of Vermont, at their stated sessions, to give in charge to the grand juries all crimes, offences, and misdemeanors, as are cognizable, as well in the said district court as the said circuit court; and such bills of indictment as shall be found in the circuit court, and cognizable in the said district court, shall, at the discretion of the said circuit court, be transmitted by the clerk of the said court, pursuant to the order of the said circuit court, with all matters and things relating thereto, to the district court next thereafter to be holden in said district, and the same proceedings shall be had thereon in said district court as though said bill of indictment had originated and been found in the said district court. And all recognizances of witnesses, taken by any magistrate in said district, for their appearance to testify in any case cognizable in either of the said courts, shall be to the circuit court next thereafter to be holden in said district.

SEC. 30. *And be it further enacted*, That, from and after the passing of this act, no special juries shall be returned by the clerks of any of the said circuit courts; but that, in all cases in which it was the duty of the said clerks to return special

uries before the passing of this act, it shall be the duty of the marshal for the district where such circuit court may be held to return special juries, in the same manner and form, as, by the laws of the respective States, the said clerks were required to return the same.

Approved, April 29, 1802.

An Act making provision for the redemption of the whole of the public debt of the United States.

Be it enacted, &c., That so much of the duties on merchandise and tonnage as, together with the moneys, other than surplusses of revenue, which now constitute the sinking fund, or shall accrue to it by virtue of any provisions heretofore made, and together with the sums annually required to discharge the annual interest and charges accruing on the present debt of the United States, including temporary loans heretofore obtained, and also future loans which may be made for reimbursing, or redeeming, any instalments, or parts of the principal of the said debts, will amount to an annual sum of seven millions three hundred thousand dollars, be, and the same hereby is, yearly appropriated to the said fund; and the said sums are hereby declared to be vested in the commissioners of the sinking fund, in the same manner as the moneys heretofore appropriated to the said fund, to be applied by the said commissioners to the payment of interest and charges, and to the reimbursement or redemption of the principal of the public debt, and shall be and continue appropriated until the whole of the present debt of the United States, and the loans which may be made for reimbursing or redeeming any parts or instalments of the principal of the said debt, shall be reimbursed and redeemed: *Provided*, That after the whole of the said debt, the old six per cent. stock, the deferred stock, the seventeen hundred and ninety-six six per cent. stock, and three per cent. stock, excepted, shall have been reimbursed or redeemed, any balance of the sums annually appropriated by this act, which may remain unexpended at the end of six months next succeeding the end of the calendar year to which such annual appropriation refers, shall be carried to the surplus fund, and cease to be vested by virtue of this act in the commissioners of the sinking fund, and the appropriation, so far as relates to such unexpended balance, shall cease and determine.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Treasury annually, and in each year, to cause to be paid, to the commissioners of the sinking fund the said sum of seven millions three hundred thousand dollars, in such payments, and at such times, in each year, as the situation of the Treasury will permit: *Provided*, That all such payments as may be necessary to enable the said commissioners to discharge or reimburse any demands against the United States, on account of the principal or interest of the debt, which shall be actually due, in conformity to the engagements of the said States, shall be made at such time and times in each year, as will enable the said commissioners

Acts of Congress.

faithfully and punctually to comply with such engagement.

SEC. 3. *And be it further enacted*, That all reimbursements of the capital or principal of the present debt of the United States, including future loans which may be made for reimbursing or redeeming any instalments, or parts of the same, and all payments on account of the interest and charges accruing upon the said debt, shall be made under the superintendence of the commissioners of the sinking fund. And it shall be the duty of the said commissioners to cause to be applied and paid out of the said fund, yearly and every year, at the Treasury of the United States, the several and respective sums following, to wit: first, such sum and sums as, by virtue of any act or acts, they have heretofore been directed to apply and to pay; secondly, such sum and sums as may be annually wanted to discharge the annual interest and charges accruing on any other part of the present debt of the United States, including the interest and charges which may accrue on future loans which may be made for reimbursing or redeeming any instalments or parts of the principal of the said debt; thirdly, such sum and sums as may annually be required to discharge any instalment or part of the principal of the present debt of the United States, and of any future loans which may be made for reimbursing or discharging the same, which shall be actually due and demandable, and which shall not, by virtue of this or any other act, be renewed or prolonged, or reimbursed, out of the proceeds of a new loan: and, also, it shall be the duty of the said commissioners to cause to be applied the surplus of such fund as may at any time exist, after satisfying the purposes aforesaid, towards the further and final redemption, by payment or purchase, of the present debt of the United States, including loans for the reimbursement thereof, temporary loans heretofore obtained from the Bank of the United States, and those demands against the United States, under any treaty or convention with a foreign Power, for the payment of which the faith of the United States has been, or may hereafter be, pledged by Congress: *Provided, however*, That the whole or any part of such demands, arising under a treaty or convention with a foreign Power, and of such temporary loans, may, at any time, be reimbursed, either out of the sinking fund, or, if the situation of the Treasury will permit, out of any other moneys which have been, or may hereafter be, appropriated to that purpose.

SEC. 4. *And be it further enacted*, That the commissioners of the sinking fund be, and they hereby are, empowered, with the approbation of the President of the United States, to borrow on the credit of the United States, either in America, or abroad, by obtaining a prolongation of former loans, or otherwise, the sums requisite for the payment of the instalments or parts of principal of the Dutch debt, which become due in the years one thousand eight hundred and three, one thousand eight hundred and four, one thousand eight hundred and five, and one thousand eight hundred and six; and that a sum equivalent to that

to be thus borrowed, or reloaned, shall be laid out by the commissioners of the sinking fund, in the purchase or redemption of such parts of the present debt of the United States, and other demands against them, as the commissioners of the sinking fund may lawfully pay, agreeably to the provisions herein before made, and as the said commissioners shall, in their judgment, deem most expedient, so as to effect the payment, annually, of seven millions three hundred thousand dollars towards the final discharge of the whole debt, agreeably to such provision: *Provided*, That the United States shall have a right to reimburse any loan thus made within six years after the date of the same, and that the rate of interest thereupon shall not exceed five per centum per annum, nor the charges thereon the rate of five per centum on the capital borrowed: *And provided, always*, That the power herein given shall not be construed to repeal, diminish, or affect the power given to the said commissioners, by the tenth section of the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt, to borrow certain sums for the discharge of the instalments of the capital, or principal, of the public debt, in the manner and on the terms prescribed by the said section; nor the power given to them by an act, entitled "An act making provision for the payment of certain debts of the United States," to borrow certain sums and to sell the shares of the Bank of the United States, belonging to the United States, in the manner, on the terms, and for the purposes authorized by the said act: *And provided, further*, That nothing herein contained shall be construed to revive any act, or part of an act, authorizing the loan of money, and which hath heretofore expired.

SEC. 5. *And be it further enacted*, That, for the purpose of more effectually securing the reimbursement of the Dutch debt, the commissioners of the sinking fund may and they hereby are empowered, with the approbation of the President of the United States, to contract either with the Bank of the United States, or with any other public institution, or with individuals, for the payment, in Holland, of the whole, or any part, of the principal of the said Dutch debt, and of the interest and charges accruing on the same, as the said demands become due, on such terms as the said commissioners shall think most advantageous to the United States; or to employ either the said bank, or any other public institution, or any individual or individuals, as agent or agents, for the purpose of purchasing bills of exchange, or any other kind of remittances, for the purpose of discharging the interest and principal of said debt; and to allow to such agent or agents a compensation not exceeding one-fourth of one per cent., on the remittance thus purchased or procured by them under the direction of the said commissioners; and as much of the duties on tonnage and merchandise as may be necessary for that purpose is hereby appropriated towards paying the extra allowance or commission resulting from such transaction, or transactions, and also to pay any defi-

Acts of Congress.

ciency arising from any loss incurred upon any remittance purchased or procured under the direction of the said commissioners, for the purpose of discharging the principal and interest of the said debt.

SEC. 6. *And be it further enacted*, That the commissioners of the sinking fund be, and they hereby are, empowered, with the approbation of the President of the United States, to employ, if they shall deem it necessary, an agent in Europe for the purpose of transacting any business relative to the discharge of the Dutch debt, and to the loans authorized by this, or any other act, for the purpose of discharging the same, and also to allow him a compensation not exceeding three thousand dollars a year, to be paid out of any moneys in the Treasury not otherwise appropriated.

SEC. 7. *And be it further enacted*, That nothing in this act contained shall be construed to repeal, alter, or affect any of the provisions of any former act pledging the faith of the United States to the payment of the interest, or principal of the public debt; and that all such payments shall continue to be made at the time heretofore prescribed by law; and the surplus only of the appropriations made by this act, beyond the sums payable by virtue of the provisions of any former act, shall be applicable to the reimbursement, redemption, or purchase of the public debt in the manner provided by this act.

SEC. 8. *And be it further enacted*, That all the restrictions and regulations heretofore established by law, for regulating the execution of the duties enjoined upon the commissioners of the sinking fund, shall apply to and be in as full force for the execution of the analogous duties enjoined by this act, as if they were herein particularly repeated and re-enacted: *Provided, however*, That the particular annual account of all sales of stock, of loans, and of payments, by them made, shall, hereafter, be laid before Congress on the first week of February in each year; and so much of any former act as directed such account to be laid before Congress within fourteen days after their meeting, is hereby repealed.

Approved, April 29, 1802.

An Act for the relief of the widows and orphans of certain persons who have died in the Naval service of the United States.

Be it enacted, &c., That the widows, if any such there be, and, in case there be no widow, the child or children of the officers, seamen, and marines, who were in the service of the United States, and lost in the ship *Insurgent* and brigantine *Pickering*, shall be entitled to, and receive, out of any money in the Treasury not otherwise appropriated, a sum equal to four months' pay of their respective husbands or fathers, as aforesaid.

Approved, April 29, 1802.

An act to regulate and fix the compensation of the officers of the Senate and House of Representatives.

Be it enacted, &c., That the officers of the Senate and House of Representatives, hereinafter

mentioned, shall be, and hereby are, entitled to receive, in lieu of their compensations as fixed by law, the following sums; that is to say: The Secretary of the Senate, and Clerk of the House of Representatives, two thousand dollars each; their principal clerks, one thousand three hundred dollars each; and each of their engrossing clerks, one thousand dollars per annum.

SEC. 2. *And be it further enacted*, That the Sergeant-at-Arms of the Senate, who also performs the duty of Doorkeeper, and the Sergeant-at-Arms of the House of Representatives shall, be, and hereby are, entitled to receive eight hundred dollars per annum, each.

SEC. 3. *And be it further enacted*, That the Doorkeeper of the House of Representatives shall be, and hereby is, entitled to receive five hundred dollars per annum, and two dollars per day, during each session of Congress; and the Assistant Doorkeeper of the Senate and House of Representatives, four hundred and fifty dollars per annum, each; and two dollars each, per day, during each session of Congress.

SEC. 4. *And be it further enacted*, That the compensations to the Secretary of the Senate and Clerk of the House of Representatives, and to their clerks, and to the other officers herein named, shall commence with the present year.

Approved, April 29, 1802.

An Act supplementary to an act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," and extending the benefits thereof to the art of designing, engraving, and etching historical and other prints.

Be it enacted, &c., That every person who shall, from and after the first day of January next, claim to be the author or proprietor of any maps, charts, book or books, and shall thereafter seek to obtain a copyright of the same, agreeable to the rules prescribed by law, before he shall be entitled to the benefit of the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," he shall, in addition to the requisites enjoined in the third and fourth sections of said act, if a book or books, give information by causing the copy of the record, which, by said act, he is required to publish in one or more of the newspapers, to be inserted at full length in the title page or in the page immediately following the title of every such book or books; and if a map or chart, shall cause the following words to be impressed on the face thereof, viz: "Entered according to the act of Congress, the — day of —, 18—, [here insert the date when the same was deposited in the office,] by A. B. of the State of —, [here insert the author's or proprietor's name, and the State in which he resides.]"

SEC. 2. *And be it further enacted*, That, from and after the first day of January next, every person being a citizen of the United States, or resident within the same, who shall invent and design, en-

Acts of Congress.

grave, etch or work, or, from his own works and inventions, shall cause to be designed and engraved, etched or worked, any historical or other print or prints, shall have the sole right and liberty of printing, reprinting, publishing, and vending such print or prints, for the term of fourteen years from the recording the title thereof in the clerk's office, as prescribed by law for maps, charts, book or books: *Provided*, he shall perform all the requisites in relation to such print or prints, as are directed in relation to maps, charts, book or books, in the third and fourth sections of the act to which this is a supplement, and shall moreover cause the same entry to be truly engraved on such plate, with the name of the proprietor, and printed on every such print or prints as is hereinbefore required to be made on maps or charts.

SEC. 3. *And be it further enacted*, That if any printseller or other person whatsoever, from and after the said first day of January next, within the time limited by this act, shall engrave, etch, or work, as aforesaid, or in any other manner copy or sell, or cause to be engraved, etched, copied or sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof, first had and obtained, in writing, signed by him or them respectively, in the presence of two or more credible witnesses; or, knowing the same to be so printed or reprinted, without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale or otherwise, or in any other manner dispose of any such print or prints, without such consent first had and obtained, as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of, or whereon, such print or prints are or shall be copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy the same; and further, that every such offender or offenders shall forfeit one dollar for every print which shall be found in his, her, or their custody; either printed, published, or exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act; the one moiety thereof to any person who shall sue for the same, and the other moiety thereof to and for the use of the United States, to be recovered in any court having competent jurisdiction thereof.

SEC. 4. *And be it further enacted*, That if any person or persons, from and after the passing of this act, shall print or publish any map, chart, book or books, print or prints, who have not legally acquired the copyright of such map, chart, book or books, print or prints, and shall, contrary to the true intent and meaning of this act, insert therein, or impress thereon that the same has been entered according to act of Congress, or words purporting the same, or purporting that the copyright thereof has been acquired; every person so offending, shall forfeit and pay the sum of one hundred dollars, one moiety thereof to the person

who shall sue for the same, and the other moiety thereof to, and for the use of the United States, to be recovered by action of debt in any court of record in the United States having cognizance thereof. *Provided always*, That in every case for forfeitures hereinbefore given, the action be commenced within two years from the time the cause of action may have arisen.

Approved, April 29, 1802.

An Act to amend "An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage; and for other purposes."

Be it enacted, &c., That, from and after the thirtieth day of June, in the present year, there shall be paid, annually, to the collector of the customs for the district of Richmond, in addition to the fees and emoluments otherwise allowed by law, the sum of two hundred and fifty dollars.

SEC. 2. *And be it further enacted*, That, from and after the said thirtieth day of June, the salary heretofore allowed by law to the collector of the customs for the district of Petersburg be, and the same hereby is, discontinued.

SEC. 3. *And be it further enacted*, That, from and after the said thirtieth day of June, whenever the annual emoluments of any collector of the customs, after deducting therefrom the expenditures incident to his office, shall amount to more than five thousand dollars; or those of a naval officer, after a like deduction, to more than three thousand five hundred dollars; or those of a surveyor, after a like deduction, to more than three thousand dollars, the surplus shall be accounted for, and be paid by them, respectively, to the Treasury of the United States. *Provided always*, That nothing in this act contained shall be construed to extend to fines, forfeitures, and penalties, under the revenue laws of the United States.

Approved, April 30, 1802.

An Act to suspend, in part, the act, entitled "An act regulating foreign coins; and for other purposes."

Be it enacted, &c., That so much of the act entitled, "An act for regulating foreign coins; and for other purposes," as is contained within the second section thereof, be, and the same is hereby suspended, for and during the space of three years, from and after the end of the present session of Congress.

Approved, April 30, 1802.

An Act to revive and continue in force an act, entitled "An Act for establishing trading-houses with the Indian tribes."

Be it enacted, &c., That the act, entitled "An act for establishing trading-houses with the Indian tribes," approved April 18, 1796, shall be, and the same is hereby, revived and continued in force, until the fourth day of March next, and no longer.

Approved, April 30, 1802.

An Act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States; and for other purposes.

Be it enacted, &c., That the inhabitants of the eastern division of the Territory Northwest of the river Ohio, be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union, upon the same footing with the original States, in all respects whatever.

SEC. 2. *And be it further enacted,* That the said State shall consist of all the territory included within the following boundaries, to wit: bounded on the east by the Pennsylvania line, on the south by the Ohio river, to the mouth of the Great Miami river, on the west by the line drawn due north from the mouth of the Great Miami, aforesaid, and on the north by an east and west line, drawn through the southerly extreme of Lake Michigan, running east after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect Lake Erie, or the territorial line, and thence with the same through Lake Erie to the Pennsylvania line, aforesaid: *Provided,* That Congress shall be at liberty at any time hereafter, either to attach all the territory lying east of the line to be drawn due north from the mouth of the Miami, aforesaid, to the territorial line, and north of an east and west line drawn through the southerly extreme of Lake Michigan, running east as aforesaid to Lake Erie, to the aforesaid State, or dispose of it otherwise, in conformity to the fifth article of compact between the original States, and the people and States to be formed in the Territory Northwest of the river Ohio.

SEC. 3. *And be it further enacted,* That all that part of the Territory of the United States Northwest of the river Ohio, heretofore included in the eastern division of said Territory, and not included within the boundary herein prescribed for the said State, is hereby attached to, and made a part of the Indiana Territory, from and after the formation of the said State, subject nevertheless to be hereafter disposed of by Congress, according to the right reserved in the fifth article of the ordinance aforesaid, and the inhabitants therein shall be entitled to the same privileges and immunities, and subject to the same rules and regulations, in all respects whatever, with all other citizens residing within the Indiana Territory.

SEC. 4. *And be it further enacted,* That all male citizens of the United States, who shall have arrived at full age, and resided within the said Territory at least one year previous to the day of election, and shall have paid a Territorial or county tax, and all persons having in other respects, the legal qualifications to vote for representatives in the General Assembly of the Territory, be, and they are hereby, authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the eastern

division aforesaid, in a ratio of one representative to every twelve hundred inhabitants of each county, according to the enumeration taken under the authority of the United States, as near as may be, that is to say: from the county of Trumbull, two representatives; from the county of Jefferson, seven representatives, two of the seven to be elected within what is now known by the county of Belmont, taken from Jefferson and Washington, counties; from the county of Washington, four representatives; from the county of Ross, seven representatives, two of the seven to be elected in what is now known by Fairfield county, taken from Ross and Washington counties; from the county of Adams, three representatives; from the county of Hamilton, twelve representatives, two of the twelve to be elected in what is now known by Clermont county, taken entirely from Hamilton county; and the elections for the representatives aforesaid, shall take place on the second Tuesday of October next, the time fixed by a law of the Territory, entitled, "An act to ascertain the number of free male inhabitants of the age of twenty-one, in the Territory of the United States Northwest of the river Ohio, and to regulate the elections of representatives for the same," for electing representatives to the General Assembly, and shall be held and conducted in the same manner as is provided by the aforesaid act, except that the qualifications of electors shall be as herein specified.

SEC. 5. *And be it further enacted,* That the members of the convention, thus duly elected, be, and they are hereby, authorized to meet at Chillicothe on the first Monday in November next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient at that time to form a constitution and State government for the people, within the said Territory, and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and State government, or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall form for the people of the said State a constitution and State government: *Provided,* The same shall be republican, and not repugnant to the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the original States and the people and States of the Territory Northwest of the river Ohio.

SEC. 6. *And be it further enacted,* That, until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted,* That the following propositions be, and the same are hereby, offered to the convention of the eastern State of the said Territory, when formed, for their free acceptance or rejection, which, if accepted by the

Acts of Congress.

convention, shall be obligatory upon the United States:

First, That the section number sixteen, in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.

Second, That the six miles reservation, including the salt springs, commonly called the Sciota salt springs, the salt springs near the Muskingum river, and in the military tract, with the sections of land which include the same, shall be granted to the said State for the use of the people thereof, the same to be used under such terms, and conditions, and regulations, as the Legislature of the said State shall direct: *Provided*, The said Legislature shall never sell nor lease the same for a longer period than ten years.

Third, That one-twentieth part of the net proceeds of the lands lying within the said State, sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same, such roads to be laid out under the authority of Congress, with the consent of the several States through which the road shall pass: *Provided always*, That the three foregoing propositions herein offered, are on the conditions that the convention of the said State shall provide, by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by Congress, from and after the thirtieth day of June next, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of five years from and after the day of sale.

Approved, April 30, 1802.

An Act to abolish the Board of Commissioners in the City of Washington, and for other purposes.

Be it enacted, &c. That, from and after the first day of June next, the offices of the commissioners appointed in virtue of an act passed on the sixteenth day of July, in the year seventeen hundred and ninety, entitled "An act to establish the temporary and permanent seat of the Government of the United States," shall cease and determine; and the said commissioners shall deliver up unto such person as the President shall appoint, in virtue of this act, all plans, draughts, books, records, accounts; deeds, grants, contracts, bonds, obligations, securities, and other evidences of debt in their possession, which relate to the city of Washington, and the affairs heretofore under their superintendence or care.

SEC. 2. And be it further enacted, That the affairs of the city of Washington, which have heretofore been under the care and superintendence of the said commissioners, shall hereafter be under the direction of a superintendent, to be appointed

by, and be under the control of, the President of the United States; and the said superintendent is hereby invested with all powers, and shall hereafter perform all duties which the said commissioners are now vested with, or are required to perform by, or in virtue of, any act of Congress, or any act of the General Assembly of Maryland, or any deed or deeds of trust from the original proprietors of the lots in the said city, or in any other manner whatsoever.

SEC. 3. And be it further enacted, That the said commissioners shall forthwith settle, with the accounting officers of the Treasury, their accounts for all moneys received and expended by them in their capacity as commissioners, and shall immediately thereafter pay to the said superintendent any balance which may be found against them upon such settlement.

SEC. 4. And be it further enacted, That the said superintendent shall pay all the debts heretofore contracted by the commissioners, in their capacity as such, the payments of which are not hereinafter specially provided for, out of any moneys received by him arising out of the city funds.

SEC. 5. And be it further enacted, That the said superintendent shall, under the direction of the President of the United States, sell so many of those lots in the city of Washington which are pledged for the repayment of a loan of two hundred thousand dollars, made by the State of Maryland, in the years one thousand seven hundred and ninety-six and one thousand seven hundred and ninety-seven, to the commissioners, for the use of the said city, as may be sufficient to pay the interest already accrued on the said loan, and the interest and instalments thereof, as they may respectively become due: *Provided*, That if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency is hereby appropriated, and shall be paid out of any money in the Treasury of the United States not otherwise appropriated.

SEC. 6. And be it further enacted, That the said superintendent shall, prior to the first day of November next, sell, under the directions of the President of the United States, all lots in the said city, which were sold antecedent to the sixth day of May, in the year one thousand seven hundred and ninety-six, and which the said commissioners are authorized by law to resell, in consequence of a failure on the part of the purchasers to comply with their contracts; and the moneys arising thereupon shall be applied, on or before the first day of November next, to the payment of the sum of fifty thousand dollars, and the interest thereon, to the State of Maryland, which said sum was formerly loaned by the said State to the commissioners for the use of the city of Washington: *Provided*, That, if a sufficient sum to meet the objects last aforesaid, shall not be produced by the sale of the whole of the lots aforesaid, then so much money as may be necessary to provide for the deficiency is hereby appropriated, and shall

be paid out of any money in the Treasury of the United States, not otherwise appropriated.

SEC. 7. *And be it further enacted*, That, after the debts already contracted by the commissioners shall have been discharged, all moneys advanced out of the Treasury in pursuance of this act, shall be reimbursed by the superintendent, by paying into the Treasury all moneys arising from the city funds, until the whole sum advanced, with the interest thereon, shall be repaid.

SEC. 8. *And be it further enacted*, That so much of the act, entitled, "An act to establish the temporary and permanent seat of Government of the United States," passed on the sixteenth day of July, in the year seventeen hundred and ninety, as relates to the appointment of commissioners shall be, and the same is hereby, repealed.

SEC. 9. *And be it further enacted*, That it shall and may be lawful to open books in the city of Washington, for receiving and entering subscriptions for opening the canal to communicate from the Potomac river to the Eastern Branch thereof, through the city of Washington, under the management of Thomas Tingey, Daniel Carroll of Duddington, Thomas Law, and Daniel Carroll Brent, which subscriptions shall be made personally, or by power of attorney; the said books shall be opened for receiving subscriptions, and continue open, until the sum of eighty thousand dollars shall be filled up, in shares of one hundred dollars each; and that each person shall, at the time of subscribing, pay down ten dollars, being one-tenth of each share; and after fourteen days previous notice, by advertisement, there shall be a meeting of the subscribers, and they are hereby declared to be incorporated into a company, by the name of the "Washington Canal Company," and may sue and be sued, as such, and make all necessary by-laws and regulations for the proper management of the business thereof: And such of the subscribers as shall be present at the said meeting, or a majority of them, are hereby empowered and required to elect a president and four directors, for conducting the said undertaking, and managing the said company's business, for and during such time, not exceeding three years, as the said subscribers, or a majority of them, shall think fit. Each member shall be allowed one vote for every share, by him or her held at the time in the said company; and any proprietor, by a writing under his or her hand, executed in presence of two witnesses, may depute any other member or proprietor to vote and act as proxy for him or her, at any general meeting.

SEC. 10. *And be it further enacted*, That the shares in the said company shall be deemed personal, and not real property, and transferable in such manner as the company shall direct.

SEC. 11. *And be it further enacted*, That the president and directors so elected, and their successors, or a majority of them, shall have full power and authority to agree with any person or persons, on behalf of the said company, to cut such canals, erect such locks, and perform such other works as they shall judge necessary for opening the canal aforesaid, and the forks thereof;

and out of the moneys arising from the subscriptions, wharfage, and tolls, to pay for the same, and to repair and improve the said canal, locks, and other works necessary thereto, and to defray all incidental charges, and also to appoint a treasurer, clerk, and such other officers, toll gatherers, managers and servants, as they shall judge requisite, and to settle their respective wages.

SEC. 12. *And be it further enacted*, That the treasurer of the company shall give bond, with such penalty and such security as the said president and directors, or a majority of them, shall direct.

SEC. 13. *And be it further enacted*, That the said president and directors, so elected, and their successors, or a majority of them assembled, shall have full power and authority to demand and receive of the proprietors, the remaining nine-tenths of the shares, from time to time, as they may be required by previous advertisement, at least one month in the Washington, Georgetown, and Alexandria gazettes; and if any of the said proprietors shall refuse or neglect to pay their proportions within one month after the same so ordered and advertised, as aforesaid, the said shares of defaulters shall be forfeited.

SEC. 14. *And be it further enacted*, That the said president and directors, so elected, and their successors, or a majority of them, shall not begin to collect wharfage or tolls, until the canal is made practicable for boats and scows to pass through the same, from the Potomac to the Eastern Branch.

SEC. 15. *And be it further enacted*, That every president and director, before he acts as such, shall take an oath or affirmation for the faithful discharge of his office.

SEC. 16. *And be it further enacted*, That there shall be a general meeting of the proprietors on the first Monday in June, and the first Monday in December, every year, in the city of Washington; to which meeting the president and directors shall make a report, and render distinct and just accounts of all their proceedings, and, on finding them fairly and justly stated, the proprietors, then present, or a majority of them, shall give a certificate thereof; and at such half yearly general meetings, after leaving in the hands of the treasurer such sum as shall be judged necessary for repairs, improvements, or contingent charges, an equal dividend of all the net profits arising from the wharfage and tolls hereby granted, shall be ordered and made, to and among all the proprietors of, the said company, in proportion to their several shares.

SEC. 17. *And be it further enacted*, That for and in consideration of the expenses the said proprietors shall incur, not only in cutting canals, but in erecting locks, and in maintaining and keeping the same in repair, and temporary enlargement and improvement of the same, that, for the space of fifty years, when the act shall cease on repayment of the principal of the sums expended, the company is hereby authorized to collect the same rates of wharfage, on all articles and materials landed on each side of the canal, as are now legally received at the wharves at Georgetown.

Acts of Congress.

And it shall and may be lawful for the said president and directors, for fifty years, and as much longer as their principal sums expended remain unpaid, to demand and to receive, at the most convenient place, for all commodities carried through a lock or locks of the canal, a toll not exceeding half a dollar on each loaded boat, and a quarter of a dollar on each loaded scow; but no toll to be charged returning. But when the wharfage shall produce the annual interest of eight per cent. on the sums expended by the president and directors, exclusive of the tolls, then the tolls shall cease, and the canal, and forks thereof, shall be entirely free for passage; and when the wharfage shall exceed the annual interest of twelve per cent., then the president and directors shall appropriate one-half of the surplus to such public purposes as Congress may direct, or reserve the same as a fund to pay off the principal: *Provided, always*, That all public property shall pass free of toll and wharfage.

SEC. 18. *Provided, nevertheless, and be it further enacted*, That in case the said Washington Canal Company, created by this act, shall not, within the term of five years, complete said canal in such manner as to admit boats drawing three feet of water to pass through the whole extent of said canal, that the said canal shall revert to the United States, and all right and authority hereby granted to the said company shall cease and determine.

Approved, May 1, 1802.

An Act to empower John James Dufour, and his associates, to purchase certain lands.

Be it enacted, &c., That, to encourage the introduction and to promote the culture of the vine within the Territory of the United States Northwest of the river Ohio, it shall be lawful for John James Dufour, and his associates, to purchase any quantity not exceeding four sections of the lands of the United States, lying between the Great Miami river and the Indian boundary line, at the rate of two dollars per acre, payable without interest, on or before the first day of January, one thousand eight hundred and fourteen.

SEC. 2. *And be it further enacted*, That it shall be the duty of the register of the land office, established at Cincinnati, to receive and to enter on his entry book, the applications of the said Dufour, and his associates, for any unappropriated sections, with the adjoining fractions, if any, not to exceed in the whole four sections, and lying within the district aforesaid: stating in each entry the date of application and the number of the section or fraction, township, and range applied for; and it shall also be the duty of the said register to deliver to the said Dufour, and his associates, a copy of each entry thus made; also a copy of the description or field notes, and of the plat of each tract, with a certificate stating that the same has been purchased under the authority of this act, at the rate of two dollars per acre, payable, without interest, on or before the first day of January, one thousand eight hundred and fourteen.

SEC. 3. *And be it further enacted*, That payment for said land may be made at the Treasury of the United States, or to the receiver of the land office at Cincinnati, either in specie, or in the evidences of the public debt of the United States, at the rates prescribed by an act, entitled "An act to authorize the receipt of evidences of the public debt in payment for lands of the United States," and a discount at the rate of six per cent. a year shall be allowed on any payments which shall be made before the same shall become due.

SEC. 4. *And be it further enacted*, That on producing to the Secretary of the Treasury copies of the entries aforesaid, and of the plats of the tracts applied for, also the certificate of the register of the land office established at Cincinnati, that the same have been purchased in conformity to the provisions of this act, the President of the United States shall be, and he hereby is, authorized and empowered to issue letters patent in the usual form, unto the said Dufour, his associates, and their heirs, for the said lands; with condition expressed in the said letters patent, that, on failure to pay the purchase-money when the same shall become due, the lands therein described, with the improvements thereon, shall be deemed forfeited, and shall revert in the United States.

Approved, May 1, 1802.

An Act making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two.

Be it enacted, &c., That the following sums, including any sum which may have been, and might be, expended during the present year, by virtue of any former appropriation, be, and the same are hereby, respectively appropriated, to defray the expenses of the Navy of the United States during the year one thousand eight hundred and two; that is to say:

For the pay and subsistence of the officers, the pay of the seamen, provisions and repairs, five hundred and eight thousand two hundred and twenty-six dollars.

For medicines, instruments, and hospital stores, ten thousand dollars.

For the purchase of ordnance and other military stores, twenty thousand dollars.

For salaries of superintendents of navy yards, storekeepers and clerks, store rent, hire of laborers, &c., twelve thousand dollars.

For the purchase and expense of transportation of timber, and other materials, including ordnance for the seventy-four gun ships, one hundred and ninety thousand five hundred and seventy-five dollars.

For the improvement of navy yards, docks, and wharves, fifty thousand dollars.

For contingencies, ten thousand dollars.

For the pay and subsistence, including provisions for those on shore, and forage for the staff of the marine corps, seventy-one thousand seven hundred and fifty-four dollars and forty cents.

For clothing for the same, fifteen thousand five hundred and nineteen dollars.

For military stores for the same, one thousand two hundred and twenty-four dollars and sixty cents.

For the quartermaster's department, comprising quarters for the officers, and barracks for the men at different stations, fuel, stationery, camp utensils, &c., seven thousand and sixty-one dollars.

For medicine, medical services, and hospital stores, one thousand dollars.

For officers' travelling expenses, armorer's and carpenter's bills, and other contingent expenses, two thousand five hundred and fifty dollars.

SEC. 2. *And be it further enacted*, That so much of the said several sums of money, hereinbefore specifically appropriated, and amounting together to the sum of nine hundred thousand dollars, as shall not have been expended by virtue of any former appropriation, shall be paid, first, out of any balance remaining unexpended of former appropriations for the support of the navy; and secondly, out of any moneys in the Treasury of the United States not otherwise appropriated by law.

Approved, May 1, 1802.

An Act to extend and continue in force the provisions of an act entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio; and for other purposes."

Be it enacted, &c., That the several provisions of an act entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers in the Territory Northwest of the Ohio" shall be, and the same are hereby, continued in force until the first day of March next, subject to the modifications contained in this act.

SEC. 2. *And be it further enacted*, That the provisions of the said act shall, and the same are, hereby extended to all persons claiming lands lying between the Miami rivers, and without the limits of Ludlow's survey, by purchase or contract made prior to the first day of January, one thousand eight hundred, with John Cleves Symmes, or his associates.

SEC. 3. *And be it further enacted*, That every person claiming lands as aforesaid, either within or without the limits of Ludlow's survey, and who have not obtained a certificate of the right of pre-emption therefor, shall, on or before the first day of November next, give notice of the nature and extent of his claim, in manner prescribed by the second section of the said act. And the receiver of public moneys, and commissioners appointed under the fourth section of the said act, shall meet at Cincinnati, on the second Monday of November next, they having giving four weeks previous notice of such meeting in a public newspaper printed at Cincinnati, and shall then and there proceed to hear and finally decide upon all claims, of which notice has been given as aforesaid, and shall, in all matters relative thereto, govern themselves by the provisions of the said act. Vacancies in the said board of commissioners may

be filled by the President of the United States alone. And the duties, powers, and emoluments, of the said commissioners, receiver of public moneys, and register of the land office at Cincinnati, and surveyor general, as prescribed by the said act, shall be, and the same are hereby, continued.

SEC. 4. *And be it further enacted*, That every person who may have obtained, or who shall hereafter obtain, as aforesaid, a certificate of a right of pre-emption from the said commissioners, shall be allowed until the first day of January next, to make the first payment required for the lands described in such certificate, and shall, in all other respects relative thereto, conform to the several provisions of the said act.

SEC. 5. *And be it further enacted*, That it shall and may be lawful for the Secretary of the Treasury to cause to be viewed, marked, and opened, such roads within the Territory Northwest of the Ohio, as in his opinion will serve to promote the sales of the public lands in future: *Provided*, That the whole sum to be expended on such roads shall not exceed six thousand dollars, and that the same shall be paid out of the moneys paid by purchasers of public lands on account of surveying expenses.

SEC. 6. *And be it further enacted*, That all the lands around Vincennes, on the Wabash, in the Indiana Territory, the Indian title to which hath been extinguished, shall be surveyed and laid off in the manner prescribed by the third section of an act, entitled "An act to amend an act entitled 'An act providing for the sales of lands of the United States in the Territory Northwest of the Ohio, and above the mouth of the Kentucky river,' under directions from the Secretary of the Treasury, and by such person or persons as the President of the United States alone shall appoint for that purpose: *Provided*, That the whole expense of surveying and marking the lines shall not exceed four dollars for every mile that actually shall be run, surveyed, and marked. And two plats of lands aforesaid shall be prepared by the person or persons who may survey the same, who shall also designate thereon the bounds of the lands of individuals held under reservations of the State of Virginia, or under the laws of the United States: one of the said plats shall be returned to the office of the Secretary of the Treasury, and the other shall be deposited with the Secretary of the Indiana Territory.

SEC. 7. *And be it further enacted*, That in all cases where any section or fractional section of land lying within the seven ranges of townships has been sold prior to the tenth day of May, one thousand eight hundred, under the authority of the United States, the lines of such section or fractional section, shall be run under the direction of the Secretary of the Treasury, in the manner most consistent with the supposed boundaries of the same, at the time of the sale; anything in the act of the tenth of May, one thousand eight hundred, to the contrary notwithstanding. And it shall be lawful for the Secretary of the Treasury, whenever lines thus run shall interfere with the claim of a purchaser of public lands under the

Acts of Congress.

last mentioned act, to permit such purchaser, if he shall desire it, at any time within six months, after such lines, thus interfering with his claim, shall have been run to withdraw his former application, and to apply in lieu thereof for any other vacant section.

Approved, May 1, 1802.

An act to provide for the establishment of certain districts, and therein to amend an act, entitled, "An act to regulate the collection of duties on imports and tonnage;" and for other purposes.

Be it enacted, &c., That, from and after the last day of June next, a district shall be formed from the district of Yorktown, in Virginia, to be called the district of East River, which shall comprehend the waters, shores, harbors, and inlets of North and East River, and Mobjack bay, and all other navigable waters, shores, harbors, and inlets, within the county of Matthews, in said State; and it shall be lawful for the President of the United States to designate a proper place to be the port of entry and delivery within the said district; and to appoint a collector and surveyor of the customs to reside and keep their offices thereat, who shall be entitled to receive, in addition to the fees and other emoluments established by law, the annual salary of two hundred dollars each.

SEC. 2. *And be it further enacted,* That, from and after the said last day of June next, Bennet's creek, within the district of Edenton, and State of North Carolina, shall cease to be a port of delivery, as heretofore established, and the office, authority, and emoluments of the surveyor of said port, shall also, from thenceforth, terminate and be discontinued; and a port of delivery, in lieu thereof, shall be established on Salmon creek, within the district aforesaid, at a place called Tombstone; and a surveyor of the customs shall be appointed to reside and keep an office thereat, who shall be entitled to receive for his services, in addition to the fees established by law, the annual salary heretofore allowed to the surveyor of Bennet's creek.

SEC. 3. *And be it further enacted,* That, from and after the said last day of June next, a port of delivery shall be established at the mouth of Slade's creek, on the north side thereof, within the district of Washington, and State of North Carolina, on a certain tract of land, intended and designated for a town, whereon William Parmley resides; and a surveyor of the customs shall be appointed to reside and keep an office thereat, who shall be entitled to receive for his services, in addition to the fees established by law, an annual salary of one hundred and fifty dollars.

SEC. 4. *And be it further enacted,* That, in the Territory of the United States Northwest of the river Ohio, there shall, from and after the passing of this act, be established a district, to be called the district of Marietta, which shall include all the waters, shores, and inlets of the river Ohio, on the northern side, and the rivers, waters, and shores connected therewith, above or to the eastward of, and including the river Scioto, from the mouth thereof, upwards, as far as the same may be nav-

igable; and a collector of the customs shall be appointed to reside and keep an office at the town of Marietta, which shall be the sole port of entry and delivery for the said district; and the said collector shall be entitled to receive for his services, in addition to the fees and other emoluments established by law, an annual salary of one hundred and fifty dollars.

SEC. 5. *And be it further enacted,* That it shall be lawful for the President of the United States to establish, when it shall appear to him to be proper, in addition to the port of entry and delivery already established on the Mississippi, south of the State of Tennessee, one other port of entry and delivery on the said river; and to appoint a collector of the customs to reside and keep an office thereat, and to appoint one or more surveyors to reside at such place or places as he may think proper to designate as ports of delivery only; and the surveyor or surveyors thus appointed shall be subject to the control and direction of the collector within whose district he or they shall reside.

SEC. 6. *And be it further enacted,* That, from and after the passing of this act, no duty shall be demanded or collected on merchandise, of the growth, produce, or manufacture, of the United States, or of any foreign country, transported coastwise between the Atlantic ports of the United States, and the districts of the United States on the river Mississippi, or any of its branches, although landed at the port of New Orleans, on its passage; provided the same would not be subject to duty, or liable to seizure, if transported from one district of the United States, on the seacoast, to another: *And provided, likewise,* That no debenture for a drawback shall have been issued upon the export of such merchandise from the Atlantic ports of the United States to any foreign port or place. And to the end as well that frauds on the revenue may be prevented, as that the coasting vessels of the United States may be permitted to participate in the said trade, the Secretary of the Treasury, with the approbation of the President, is hereby authorized to prescribe and establish such forms and regulations, and the same from time to time, with like approbation, to alter and amend, for the government of the officers of the customs in this respect, as he may think proper and necessary; on the observance of which, merchandise thus transported shall be exempted from duty; and it shall be lawful for the coasting vessels of the United States to be employed in the said trade, and not otherwise.

SEC. 7. *And whereas* it is provided, by the hundred and fourth section of the collection law, that merchandise belonging to British subjects may be brought (without regard to the character of the vessel importing the same) into the ports of the United States on the northern and northwestern frontiers, subject to no higher or other duties than are or shall be payable by the citizens of the United States, on the importation of the same in American vessels into the Atlantic ports of the United States; and it being just and reasonable that the same privilege should be extended to vessels and merchandise belonging to persons resi-

ding at New Orleans, and other ports of Louisiana and Florida, on the Mississippi, or any of its branches: *Be it further enacted*, That, from and after the last day of June next, all goods and merchandise, the importation of which into the United States shall not be wholly prohibited, shall and may freely, for the purposes of commerce, be brought into the ports of the United States on the Mississippi, or any of its branches, in vessels belonging to New Orleans, or any other port of Louisiana or Florida, on the Mississippi; and such goods or merchandise shall be subject to no higher or other duties than are payable by the citizens of the United States, on the importation of the same in American vessels into the Atlantic ports of the United States.

SEC. 8. *And be it further enacted*, That, from and after the last day of June next, no duty on the tonnage of any boat, flat, or raft, or other vessel, shall be demanded or collected on the arrival or entry of such boat, flat, or raft, or other vessel, in any district which is or may be established on the Mississippi, or any of its branches, and on the northern and northwestern boundaries of the United States: *Provided, nevertheless*, That this exemption shall not be construed to extend to any vessel above fifty tons burden, and which shall not be wholly employed in carrying on inland trade between the ports of the United States on the Mississippi, and its branches, and the ports of Louisiana and Florida, on the same, including New Orleans, and between the ports of the northern and northwestern boundaries of the United States and the British provinces of Upper and Lower Canada.

SEC. 9. *And be it further enacted*, That all that part of the act, entitled "An act to regulate the collection of duties on imports and tonnage," passed on the second day of March, one thousand seven hundred and ninety-nine, that directs that the collector of the district of Georgetown shall reside at Georgetown, be, and is hereby, repealed.

Approved, May 1, 1802.

An Act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two.

Be it enacted, &c., That, for defraying the several expenses of the Military Establishment of the United States, for the year one thousand eight hundred and two, for the Indian department, for arsenals and armories, and for the erection of fortifications, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the Army of the United States, the sum of two hundred and ninety-two thousand two hundred and seventy-two dollars, including therein the sum of sixty thousand dollars, appropriated by an act of the present session.

For the subsistence of the army, the sum of two hundred and one thousand and twenty-seven dollars and forty cents.

For forage, three thousand eight hundred and four dollars.

For clothing, sixty-six thousand six hundred and thirty dollars.

For the medical and hospital department, ten thousand dollars.

For bounties and premiums, two thousand dollars.

For all expenses of transportation, tents, tools, and the contingent expenses of the War Department, sixty-four thousand dollars.

For the pay, subsistence, and clothing of the corps of engineers, seven thousand and ten dollars and eighty cents.

For the Indian department, seventy-one thousand seven hundred and fifty dollars.

For the expenses incident to the arsenals, magazines, and armories of the United States, sixty-six thousand seven hundred and sixty-six dollars and eighty-eight cents.

For erecting and completing fortifications and barracks, seventy thousand five hundred dollars.

For running certain boundary lines between the Indians and the white inhabitants of the United States, and for ascertaining the lines of sundry reserved tracts of land in the Indiana and Northwestern Territories, five thousand dollars.

SEC. 2. *And be it further enacted*, That, for defraying all expenses which will arise in consequence of discharging the officers, non-commissioned officers, and privates, who are or shall be supernumerary by the act of the present session, entitled "An act fixing the Military Peace Establishment of the United States," and for carrying the said act into complete operation, the following sums be, and they hereby are, respectively appropriated, that is to say:

For pay of the officers, non-commissioned officers, and privates, to be discharged, thirty-nine thousand five hundred dollars.

For subsistence, eighteen thousand dollars.

For clothing, twelve thousand dollars.

For forage, one thousand five hundred dollars.

For medical department, two thousand dollars.

For the quartermaster's department, forty-five thousand dollars.

For bounties and premiums, one thousand five hundred dollars.

For allowance to officers and soldiers who are to be discharged, thirty thousand dollars.

For contingencies, nine thousand dollars.

SEC. 3. *And be it further enacted*, That a sum not exceeding forty thousand dollars, including any unexpended balance of the sum of fifteen thousand dollars, appropriated by the act approved on the thirteenth of May, one thousand eight hundred, entitled "An act to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians," be, and the same hereby is, appropriated for defraying the expense of any treaty or treaties which may be held with the Indians south of the river Ohio: *Provided*, That the compensation to be allowed to any commissioner appointed, or who may be appointed, for negotiating such treaty or treaties, shall not exceed, exclusive of travelling expenses, the rate of eight dollars per day, during the actual service of such commissioner.

Acts of Congress.

SEC. 4. *And be it further enacted*, That the several appropriations, hereinbefore made, shall be paid and discharged, first, out of any balance remaining unexpended of former appropriations for the same objects respectively, and, secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved, May 1, 1802.

An Act making appropriations for the support of Government for the year one thousand eight hundred and two.

Be it enacted, &c., That for the expenditure of the civil list, including the contingent expenses of the several departments and officers; for the compensation of clerks in the several loan offices, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint establishment; for the expenses of intercourse with foreign nations; for the support of light-houses, beacons, buoys, and public piers, and for satisfying certain miscellaneous claims and expenses, the following sums, including therein the sum of one hundred thousand dollars already appropriated, by an act, entitled "An act making a partial appropriation for the support of Government during the year one thousand eight hundred and two," be, and are hereby, appropriated, that is to say:

For compensations granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimated for a session of five months continuance, one hundred and sixty-four thousand five hundred and twenty-six dollars and sixty-six cents.

For the expense of fire-wood, stationery, printing, and all other contingent expenses of the two Houses of Congress, seventeen thousand dollars.

For extraordinary contingent expenses of the House of Representatives, by resolutions of the House during the present session, including also the expenses of the library of the two Houses of Congress, and for printing one thousand copies of the Census of the United States, seven thousand dollars.

For defraying the expense of new furniture, provided for the House of Representatives, one thousand two hundred and forty-four dollars and eighty-five cents.

For the compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks and persons employed in that department, eleven thousand three hundred and sixty dollars.

For the incidental and contingent expenses in the said department, twelve thousand eight hundred and fifty dollars.

For compensation to the Secretary of the Treasury, clerks and persons employed in his office, eleven thousand two hundred and forty-nine dollars and eighty-one cents.

For expenses of translating foreign languages, allowance to the person employed in receiving

and transmitting passports and sea-letters, stationery and printing, eight hundred dollars.

For compensation to the Comptroller of the Treasury, clerks and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For expense of stationery and printing in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery and printing in the office of the Auditor, five hundred dollars.

For compensation to the Treasurer, clerks and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For expense of stationery and printing in the Treasurer's office, three hundred dollars.

For compensation to the Commissioner of the Revenue, clerks and persons employed in his office, (including the wages of two persons employed in counter-stamping paper in the said office,) six thousand six hundred and forty-three dollars and six cents.

For expense of stationery and printing in the office of the Commissioner of the Revenue, four hundred dollars.

For compensation to the Register of the Treasury, clerks and persons employed in his office, sixteen thousand and fifty-two dollars and one cent.

For expense of stationery and printing (including books for the public stocks and for the arrangement of the marine papers) in the Register's office, two thousand eight hundred dollars.

For compensation to the Superintendent of Stamps, clerks and persons employed in his office, one thousand six hundred and sixteen dollars and sixty-seven cents.

For expense of stationery and printing in the office of Superintendent of Stamps, two hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of clerks to be employed in the Treasury, in addition to those authorized by the act of the second of March, one thousand seven hundred and ninety-nine, for the purpose of making draughts of the several surveys of lands in the Territory of the United States Northwest of the river Ohio, and for keeping the books of the Treasury in relation to the sales of land at the several land offices, two thousand dollars.

For fuel and other contingent expenses of the Treasury Department, including therein the sum of one thousand dollars already appropriated, four thousand dollars.

For defraying the expense incident to the stating and printing the public accounts for the year one thousand eight hundred and two, one thousand two hundred dollars.

For defraying the expense of printing two large tables of imports, for one year, (ending the thir-

Acts of Congress.

tieth of September, one thousand seven hundred and ninety-nine,) in American and foreign vessels, including paper furnished for the same, one hundred and sixty-four dollars.

For compensation to a Superintendent employed to secure the buildings and records in the Treasury Department, during the present year, and for nine months service in the year one thousand eight hundred and one, not heretofore appropriated, including the expense of two watchmen, and the repair of fire-engines, buckets, &c., one thousand four hundred dollars.

For compensation to the Secretary of War, clerks and persons employed in his office, eleven thousand two hundred and fifty dollars.

For expenses of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation of clerks employed in the Paymaster General's office, one thousand eight hundred dollars.

For fuel in the said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks and persons employed in his office, including a sum of seven hundred dollars for compensations to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for expense of stationery and fuel in the said office, three thousand eight hundred dollars.

For compensation to the Secretary of the Navy, clerks and persons employed in his office, nine thousand one hundred and ten dollars.

For expense of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of the Navy, two thousand seven hundred dollars.

For compensation to the Accountant of the Navy, clerks and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand three hundred and fifty dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks and persons employed in the Postmaster General's office, and for making good a deficiency in the appropriation for clerk hire in the said office, in the year one thousand eight hundred and one, including a sum of two thousand three hundred dollars for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, eleven thousand seven hundred and five dollars.

For expense of fuel, candles, stationery, furni-

ture, chests, &c., exclusive of expenses of suits, prosecutions, mail-locks, keys, portmanteaus, saddle bags, blanks for post offices, advertisements relative to the mail, and other expenses incident to the department at large, these being paid for by the Postmaster General out of the funds of the office, two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks to the Commissioners of Loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans for the State of Pennsylvania, in addition to the permanent provision made by law, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For compensation to the Surveyor General, and the clerks employed by him, and for expense of stationery and other contingent expenses in the Surveyor General's office, three thousand two hundred dollars.

For defraying the expense of publishing in the Sciota Gazette, the act providing for the sale of lands in the Territory Northwest of the river Ohio, and of paper for printing twelve hundred copies of the act providing for the sale of Western lands of the United States, eighty-four dollars.

For completing certain surveys authorized by acts of Congress, passed the tenth of May, one thousand eight hundred, the eighteenth of February and third of March, one thousand eight hundred and one, and for surveying and laying off, according to law, the lands around Vincennes, on the Wabash, in the Indiana Territory, thirty-nine thousand two hundred and ninety-six dollars and ninety cents.

For compensation to the following officers of the Mint:

The director, two thousand dollars.

The treasurer, one thousand two hundred dollars.

The assayer, one thousand five hundred dollars.

The chief coiner, one thousand five hundred dollars.

The melter and refiner, one thousand five hundred dollars.

The engraver, one thousand two hundred dollars.

One clerk, at seven hundred dollars;

And two, at five hundred dollars each.

For the wages of persons employed at the different branches of melting, refining, coining, carpenter, millwright, and smith's work, including the sum of eight hundred dollars per annum, allowed to an assistant coiner and die-forging, who also oversees the execution of the iron work, seven thousand dollars.

For repairs of furnaces, cost of rollers and screws, bar-iron, lead, steel, office furniture, and

Acts of Congress.

for all other contingencies of the establishment of the Mint, three thousand nine hundred dollars.

For compensation to the Governor and Judges, and Secretary of the Territory Northwest of the river Ohio, five thousand one hundred and fifty dollars.

For expenses of stationery, printing patents for land, and other contingent expenses for lands in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses, in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For additional compensation to the clerks of the several departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding for each department respectively, fifteen per centum in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For the compensation granted by law to the chief justice, associate judges, circuit judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the Attorney General, sixty-eight thousand six hundred and fifty dollars.

For the like compensations granted to the district attorneys, and for defraying the expenses of the supreme, circuit, and district courts of the United States, including the court for the District of Columbia, jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties; and likewise for defraying the expenses of prosecution for offences against the United States, and for safekeeping of prisoners, fifty-six thousand nine hundred dollars.

For compensation to the marshals of the district of Maine, New Hampshire, Vermont, Kentucky, East and West Tennessee, one thousand two hundred dollars.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For carrying into effect the act of Congress, of the third of February, one thousand eight hundred and two, relative to the officers and crew of the United States schooner *Enterprise*, one thousand seven hundred and nineteen dollars.

For payment of the annuity granted to the children of the late Colonel John Harding and

Major Alexander Trueman, by an act of Congress passed the fourteenth of May, one thousand eight hundred, six hundred dollars.

For payment of the annual allowance to the invalid pensioners of the United States, for their pensions from the fifth of March, one thousand eight hundred and two, to the fourth of March, one thousand eight hundred and three, ninety-three thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and for occasional improvement in the construction of lanterns and lamps, and materials used therein, and other contingent expenses, including commissions to the superintendents of the said light-houses, at two and a half per centum, forty-four thousand eight hundred and forty-one dollars, and forty-four cents.

For the discharge of such miscellaneous demands against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For defraying the contingent expenses of Government, twenty thousand dollars.

For defraying the expenses of taking the second enumeration of the inhabitants of the United States, in addition to the appropriation heretofore made for that object, twenty thousand dollars.

For defraying the expenses incident to the purchase or erection of certain warehouses and stores for the reception of goods, wares, and merchandise, under the "Act respecting quarantine and health laws," passed the twenty-fifth of February, one thousand seven hundred and ninety-nine, sixty-ninethousand and twenty-six dollars, and twelve cents.

For the expenses of intercourse with foreign nations, sixty-four thousand and fifty dollars.

For the salaries of the Commissioners under the seventh article of the treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, including contingent expenses, twenty-four thousand and sixty-six dollars and sixty-seven cents.

For salaries of the agents of the United States in London and Paris, expenses of prosecuting claims and appeals in the courts of Great Britain, in relation to captures of American vessels, and defending causes elsewhere, twenty-nine thousand dollars.

For the salary of an agent in London for the relief and protection of American seamen, and contingent expenses to be incurred therein; and for relieving seamen elsewhere, fifteen thousand dollars.

SEC. 2. *And be it further enacted*, That the several appropriations hereinbefore made, shall be paid and discharged out of the fund of six hundred thousand dollars reserved by the act "making provision for the debt of the United States," and out of any money which may be in the Treasury not otherwise appropriated.

Approved, May 1, 1802.

Acts of Congress.

An Act further to alter and establish certain post roads; and for the more secure carriage of the mail of the United States.

Be it enacted, &c., That the following post roads be discontinued:

From Pelham, to Nottingham West, in New Hampshire.

From Hanover to Scituate, in Massachusetts.

From Bridgewater to Taunton.

From New York to Sagg Harbor, in the State of New York.

From Schenectady to Sandy Hill.

From Salem to Bridgetown, in New Jersey.

From Lumberton, by Elizabethtown, to Andersonville, in North Carolina.

From Rockford, by Scull Camp, to Grayson court-house.

From Amelia court-house, by Pridesville, to Paynesville, in Virginia.

From Washington to Cincinnati.

From Franklin court-house, to Jackson court-house, in Georgia.

From Golden's, by Geesbridge, St. Tammany's, Mecklenburg court-house, Marshall's store, Christian's store, Lunenburg court-house, and Edmund's store, to Goldson's.

SEC. 2. *And be it further enacted,* That the following post roads be established:

In Maine—From Dennysville to Eastport.

From Machias, by Dennysville, to Scodiac.

In New Hampshire—From Pelham, by Windham, to Londonderry.

From Haverhill, by Bath and Littleton, to Lancaster.

In Massachusetts—From Boston, by Easton, to Taunton.

From Hingham, by Cohasset, to Scituate.

From Springfield, by South Hadley, to Northampton.

From Salem, by Topsfield, to Haverhill.

In Vermont—From Middlebury, by New Haven, Moncton, Hinesburg, Williston, Jericho, Essex, Westford, Fairfax, and Sheldon, to Huntsburg; to return from Huntsburg, by Berkshire, Enosburg, Bakersfield, Cambridge, Underhill, Jericho, Richmond, Huntington, Starksborough, and Bristol, to Middlebury.

From Danville, by St. Johnsbury, through Barnet, to return to Ryegate.

In Connecticut—From Hartford, by Coventry, Windham, and Canterbury, to Plainfield.

From Middletown, by Haddam, to Saybrook.

From New Haven, by Woodbridge, Waterbury, and Watertown, to Litchfield.

From Norwich, by Lisbon, Canterbury, and Brooklyn, to Pomfret.

In New York—From New York, by Brooklyn, Jamaica, Hampstead, Merrick, Oysterbay South, Huntington South, Islip, Patchauge Fireplace, Moriches, West Hampton, Southampton, and Bridgehampton, to Sagg Harbor.

From Hampstead, by Huntington, Smithtown, Brookhaven, and Riverhead, to Southold.

From Newtown, in the county of Tioga, by Catharinatown, to Geneva.

From Schenectady to Ballstown Springs, Milton, Saratoga Springs, Greenfield, Hadley, Gallopway, Charleton, and again to Schenectady.

From Sandy Hill to Fort George, and through the towns of Thermon and Jay, to Plattsburg, and thence to the Northern line of said State.

In New Jersey—From Woodbury, by Bridgetown, Milville, Port Elizabeth, and Cape May court-house, to Cape Island.

From Somerset court-house, by Baskenridge, to Morristown.

From New Germantown, by David Miller's, in Washington township, and New Hampton, to Pittstown.

In Pennsylvania—From Lancaster, by Reading, Allentown, Bethlehem, and Stroud's, to Milford.

From Lebanon to Jonestown.

From Jenkinstown, by the cross roads and New Hope, to Flemmington, New Jersey.

From Chambersburg, by Messersburg, to Bedford.

From Downingtown, by Westchester, Kennet's square, and New London cross roads, to the brick meeting-house, in Maryland.

In Maryland—From Reistertown, by McAlisterstown, Abbotstown, and Berlin, to Carlisle, Pennsylvania.

From Elkton, by the brick meeting-house, to the Rising Sun, Black Horse, and Sorrel Horse taverns, to Lancaster, Pennsylvania.

From Westminster, in Maryland, by Union Mills, Petersburg, and Gettysburg, to Chambersburg, in Pennsylvania.

From Boonsborough, by Sharp'sburg and Hagerstown, to Messersburg, Pennsylvania. The mail from Ellicott's Mills to Montgomery court-house, shall pass by Brookville.

In Delaware—From Georgetown, by Proadkiln landing, to Lewistown.

From Newport, by Chatham, Cochran's, and Strasburg, to Lancaster, in Pennsylvania.

From Whitelysburg to Frederica.

From Georgetown, by Bridge branch, and Northwest Forkbridge, to Huntington creek or Newmarket, Maryland, as the postmaster may direct.

In Virginia—From Leesburg to Centreville.

From New Dublin, by Tazewell court-house, and Lee court-house, to Robinson's mills, at the foot of Cumberland mountain.

From Cumberland court-house, to Ca Ira.

From Culpepper court-house, by Woodville and Mundell's store, to Newmarket, in Shenandoah county.

From Fauquier court-house, by Aquia, to King George court-house.

From Winchester, by Frontroyal, to Culpepper court-house.

From Brook court-house, to Steubenville, in the Northwestern Territory.

From Brooke court-house, to West Liberty.

From Brookington, by Newman's and Randolph's taverns, and Ennis's store, to Henderson and Fitzgerald's store.

From Amelia court-house, by Perkins's store, to Painesville.

From Wyllesville, in Charlotte county, by Speed and Wilson's store, Sterling Yancey's and Norman's store, to Person court-house in North Carolina.

From Harrisville, by Field's mill, Quarrelsville, McFarland's store, Lunenburg court-house, Christiansville, Marshalsville, Mecklenburg court-house, and St. Tammany's; and to return by Geesbridge, Edmund's store, Field's mill, to Harrisville.

From Richmond court-house to Tappahanock.

In North Carolina—From Plymouth to Robert Winn's, on Scuppernon river.

From Jonesburg to Pasquotank river bridge.

From Rutherfordstown, by John Gowen's store, to Greenville court-house, in South Carolina.

From Wilkes to Ash court-house.

The road from Mount Airy to Grayson court-house, in Virginia, shall pass by Scull Camp.

In Tennessee—From Jonesborough to Carter court-house.

From Nashville to Franklin.

From Knoxville to Burville.

In South Carolina—The road from Edgefield to Cambridge, shall pass by Amos Richardson's, and return by Northampton.

From Monk's corner, over Biggen Bridge, by Pineville, Murray's ferry, Santee, to Kingstree.

In Georgia—From Oglethorpe court-house, by Athens, through Clarksburg, to Jackson court-house.

In Kentucky—From Shelbyville to Louisville.

From Danville, by Pulaski court-house, to Wayne court-house.

In the North-western Territory—From Marietta, by Chilicothe and Williamsburg, to Cincinnati.

SEC. 3. *And be it further enacted*, That, for the better and more secure carrying of the mail of the United States on the main post road between Petersburg, in Virginia, and Louisville, in Georgia, the Postmaster General shall be, and hereby is, authorized and directed to engage and contract with private companies, or adventurers, for carrying the mail of the United States, for a term of time not exceeding five years, in mail coaches or stages, calculated to convey passengers therein: *Provided*, That the expense thereof shall not exceed a sum equal to one-third more than the whole of the present expense incurred for carrying the mail on such road on horseback. And the said Postmaster General may hereafter, at his discretion require, as a stipulation in the contract for carrying the mail from Suffield, in Connecticut, by Windsor, in Vermont, to Dartmouth College, in New Hampshire; that the same shall be conveyed in a carriage or line of stages: *Provided*, The expense thereof shall not exceed more than one-third the sum heretofore given for carrying the mail on the last mentioned route by a post rider.

SEC. 4. *And be it further enacted*, That, from and after the first day of November next, no other than a free white person shall be employed in carrying the mail of the United States, on any of the post roads, either as a post rider or driver of a carriage carrying the mail; and every contractor or person who shall have stipulated, or may here-

after stipulate, to carry the mail, or whose duty it shall be to cause the same to be conveyed, on any of the post roads, as aforesaid, and who shall, contrary to this act, employ any other than a free white person as a post rider or driver, or in any other way, to carry the mail on the same, shall, for every such offence, forfeit and pay the sum of fifty dollars, one moiety thereof to the use of the United States, and the other moiety thereof to the person who shall sue for, and prosecute the same, before any court having competent jurisdiction thereof.

SEC. 5. *And be it further enacted*, That all letters, packets and newspapers, to and from the Attorney General of the United States, shall be conveyed by post free of postage: *Provided*, That all letters by him sent be franked in the manner required by the seventeenth section of the act to establish the Post Office.

SEC. 6. *And be it further enacted*, That the Postmaster General be authorized to allow the postmasters, at the several distributing offices, such compensation as shall be adequate to their several services in that respect: *Provided*, That the same shall not exceed in the whole five per cent. on the whole amount of postages on letters and newspapers received for distribution, and that the said allowance be made to commence on the first day of June, in the year one thousand eight hundred: *Provided, also*, That if the number of mails received at, and despatched from, any such office is not actually increased by the distributing system, then no additional allowance shall be made to the postmaster.

SEC. 7. *And be it further enacted*, That there shall be allowed to the deputy postmaster at the city of Washington, for his extraordinary expenses incurred in the discharge of the duties of his office, an additional compensation, at the rate of one thousand dollars per annum, to be computed from the first day of January last.

SEC. 8. *And be it further enacted*, That this act shall not be so construed as to affect any existing contracts for carrying the mail.

Approved, May 3, 1802.

An Act to amend an act, entitled "An act for the relief of sick and disabled seamen;" and for other purposes.

Be it enacted, &c., That the moneys heretofore collected in pursuance of the several acts, "for the relief of sick and disabled seamen," and at present unexpended, together with the moneys hereafter to be collected by authority of the beforementioned acts, shall constitute a general fund, which the President of the United States shall use and employ, as circumstances shall require, for the benefit and convenience of sick and disabled American seamen: *Provided*, That the sum of fifteen thousand dollars be, and the same is hereby, appropriated for the erection of an hospital in the district of Massachusetts.

SEC. 2. *And be it further enacted*, That it shall be lawful for the President of the United States to cause such measures to be taken as, in his opin-

ion, may be expedient for providing convenient accommodations, medical assistance, necessary attendance, and supplies, for the relief of sick or disabled seamen of the United States, who may be at or near the port of New Orleans, in case the same can be done with the assent of the government having jurisdiction over the port; and for this purpose, to establish such regulations, and to authorize the employment of such persons as he may judge proper; and that, for defraying the expense thereof, a sum not exceeding three thousand dollars be paid out of any moneys arising from the said fund not otherwise appropriated.

SEC. 3. *And be it further enacted*, That, from and after the thirtieth day of June next, the master of every boat, raft, or flat, belonging to any citizen of the United States, which shall go down the Mississippi with intention to proceed to New Orleans, shall, on his arrival at Fort Adams, render to the collector or naval officer thereof, a true account of the number of persons employed on board such boat, raft, or flat, and the time that each person has been so employed, and shall pay to the said collector or naval officer at the rate of twenty cents per month, for every person so employed, which sum he is hereby authorized to retain out of the wages of such person: and the said collector or naval officer shall not give a clearance for such boat, raft, or flat, to proceed on her voyage to New Orleans, until an account be rendered to him of the number of persons employed on board such boat, raft, or flat, and the money paid to him by the master or owner thereof: And if any such master shall render a false account of the number of persons, and the length of time they have severally been employed, as is herein required, he shall forfeit and pay fifty dollars, which shall be applied to, and shall make a part of, the said general fund for the purposes of this act: *Provided*, That all persons employed in navigating any such boat, raft, or flat, shall be considered as seamen of the United States, and entitled to the relief extended by law to sick and disabled seamen.

SEC. 4. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to nominate and appoint for the port of New Orleans, a fit person to be director of the marine hospital of the United States, whose duties shall be in all instances the same as the directors of the marine hospital of the United States, as directed and required by the act, entitled "An act for the relief of sick and disabled seamen."

SEC. 5. *And be it further enacted*, That each and every director of the marine hospital within the United States, shall, if it can with convenience be done, admit into the hospital of which he is director, sick foreign seamen, on the application of the master or commander of any foreign vessel to which such sick seamen may belong; and each seaman so admitted shall be subject to a charge of seventy-five cents per day for each day he may remain in the hospital, the payment of which the master or commander of such foreign vessel shall make to the collector of the district in which such hospital is situated: and the collector shall not grant a clearance to any foreign vessel, until the

money due from such master or commander, in manner and form aforesaid, shall be paid; and the director of each hospital is hereby directed, under the penalty of fifty dollars, to make out the accounts against each foreign seaman that may be placed in the hospital, under his direction, and render the same to the collector.

SEC. 6. *And be it further enacted*, That the collectors shall pay the money collected by virtue of this and the act to which this is an amendment, into the Treasury of the United States, and be accountable therefor, and receive the same commission thereon as for other moneys by them collected.

SEC. 7. *And be it further enacted*, That each and every director of the marine hospital shall be accountable at the Treasury of the United States for the money by them received, in the same manner as other receivers of public money, and, for the sums by them expended, shall be allowed a commission at the rate of one per cent.

Approved, May 3, 1802.

An Act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty.

Be it enacted, &c., That, for carrying into effect the convention of the eighth day of January, one thousand eight hundred and two, between the United States and His Britannic Majesty, the sum of two millions six hundred and sixty-four thousand dollars be, and the same hereby is, appropriated.

SEC. 2. *And be it further enacted*, That the aforesaid sum shall be paid in such instalments, and at such times, as are fixed by the said convention, out of any moneys in the Treasury, not otherwise appropriated.

Approved, May 3, 1802.

An Act additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia."

Be it enacted, &c., That the circuit court of the county of Washington, in the Territory of Columbia, shall have power to proceed in all common law and chancery causes, which now are or hereafter shall be instituted before it, in which either of the parties reside without the said Territory, in the same way that non-residents are proceeded against in the general court or in the supreme court of chancery in the State of Maryland.

SEC. 2. *And be it further enacted*, That the circuit court of the county of Alexandria, in the District of Columbia, shall have power to proceed in all common law and chancery causes, which now are or hereafter shall be instituted before it, in which either of the parties are non-residents of said District of Columbia, in the same way, and under the same regulations, observed by the district court or by the high court of chancery in Virginia, in proceeding against non-residents.

SEC. 3. *And be it further enacted*, That the courts for the counties of Alexandria and Wash-

Acts of Congress.

ington shall hereafter be holden at the periods following, to wit: for the county of Alexandria, on the fourth Monday of June and November, and for the county of Washington, on the fourth Monday of July and December, in each year; and all process heretofore issued from the offices of the said courts and not yet returned, shall be returnable to the first day of the sessions of the said courts, respectively, and all causes now depending in the same shall stand adjourned and continued over to the next sessions of the said courts, as established by this act. And the said courts are hereby invested with the same power of holding adjourned sessions that are exercised by the courts of Maryland.

SEC. 4. *And be it further enacted*, That no *ca-pias ad satisfaciendum* shall hereafter issue on any judgment rendered by a single magistrate, or in any case where the judgment, exclusive of costs, shall not exceed twenty dollars; but that in such cases execution shall be only on goods and chattels of the debtor, and shall issue by order of the justice who may have taken cognizance of the action, from the clerk's office, and shall be returnable thereto; that all such executions be returnable on the first Monday in every month, and that the same, and also the warrant to bring the property before the justice, be directed to one of the constables, whose duty it shall be to obey the same; that each of the said constables shall give bond, with one sufficient surety, to be approved of by any one of the district judges, for the faithful execution of the duties of his office, in the sum of five hundred dollars; that the clerk's fees for issuing and filing the return of every such execution, shall be twenty-five cents; the constable's fees for return and service, shall be fifty cents; and that a commission of eight per cent. be allowed the constable for every sum thereon by him levied.

SEC. 5. *And be it further enacted*, That so much of the original act to which this is a further supplement as confines the jurisdiction of the courts of this Territory to cases between parties who are inhabitants of, or residents within the same, shall not be construed to extend to any case where, by the laws of Maryland and Virginia, respectively, attachments may issue to affect the property of absconding debtors, or others having property within the district, and whose persons are not answerable to the process of the court.

SEC. 6. *And be it further enacted*, That the taxes to be levied in the county of Alexandria shall hereafter be assessed by the justices of the peace of the said county, and the poor of the town and county parts of the said county of Alexandria shall be provided for, respectively, in like manner as the county and corporation courts were authorized to do by the laws of Virginia, as they stood in force within the said county on the first Monday of December, in the year one thousand eight hundred.

SEC. 7. *And be it further enacted*, That no part of the laws of Virginia or Maryland declared by an act of Congress, passed the twenty-seventh day of February, one thousand eight hundred and

one, "concerning the District of Columbia," to be in force within the said District, shall ever be construed so as to prohibit the owners of slaves to hire them within, or remove them to, the District, in the same way as was practised prior to the passage of the above recited act.

SEC. 8. *And be it further enacted*, That so much of two acts of Congress, the one passed the twenty-seventh day of February, one thousand eight hundred and one, entitled "An act concerning the District of Columbia;" the other passed the third day of March, one thousand eight hundred and one, supplementary to the aforesaid act, as provides for the compensation to be made to certain justices of the peace thereby created, and for compensation to jurors attending the courts within said District, except so much thereof as relates to their travelling expenses attending the same, shall be, and is hereby, repealed; and the jurors, in future, shall serve in the said courts, and be summoned to attend the same in like manner as jurors serve and were summoned in the courts of Virginia, prior to the passage of the above recited act.

SEC. 9. *And be it further enacted*, That ordinary licenses, retailers' licenses, and hawkers and pedlars' licenses, shall be granted by the circuit court of the said District, in the respective counties, as the same were heretofore granted by the courts of Maryland and Virginia, respectively. And the several judges of the said circuit court shall have like authority to grant such licenses in vacation, as the justices of the courts of Maryland and Virginia heretofore possessed; and the money arising from such licenses shall be applied to the use and benefit of the said counties, respectively, in such manner, and to such purposes, as the justices of the levy courts in the same shall appoint and direct.

SEC. 10. *And be it further enacted*, That the marshal of the District of Columbia be, and he hereby is, authorized and directed, with the approbation of the President of the United States, to cause a good and sufficient jail to be built within the city of Washington, and that a sum not exceeding eight thousand dollars be, and the same hereby is, appropriated to that purpose, to be paid out of any unappropriated moneys in the Treasury.

SEC. 11. *And be it further enacted*, That the corporation of Georgetown, in the District of Columbia, shall have full power and authority to tax any particular part or district of the town for paving the streets, lanes, or alleys therein, or for sinking wells, or erecting pumps which may appear for the benefit of such particular part or district: *Provided*, That the rate of tax so to be levied shall not exceed two dollars per foot front, and that the same shall be enforced and collected in the same manner that the taxes which the said corporation had heretofore been authorized to lay and collect.

SEC. 12. *And be it further enacted*, That articles inspected at one port in the said District shall not be subject to a second inspection at any other port in the said District.

SEC. 13. *And be it further enacted*, That the

President of the United States be authorized to cause the militia of the respective counties of Washington and Alexandria to be formed into regiments and other corps, conformably, as nearly as may be, to the laws of Maryland and Virginia as they stood in force in the said counties, respectively, on the first Monday in December, in the year one thousand eight hundred; and that he appoint and commission, during pleasure, all such officers of the militia of the said District as he may think proper; that he be authorized to call them into service in like manner as the Executives of Maryland and Virginia were authorized in the counties of Washington and Alexandria, respectively, on the first Monday of December, one thousand eight hundred; and that such militia, when in actual service, be entitled to the same pay and emoluments as the militia of the United States when called out by the President.

Approved, May 3, 1802.

An Act to incorporate the inhabitants of the City of Washington, in the District of Columbia.

Be it enacted, &c., That the inhabitants of the City of Washington be constituted a body politic and corporate, by the name of a Mayor and Council of the City of Washington, and by their corporate name, may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons, and may purchase and hold real, personal, and mixed property, or dispose of the same for the benefit of the said city; and may have and use a city seal, which may be broken or altered at pleasure. The City of Washington shall be divided into three divisions or wards, as now divided by the levy court for the county, for the purpose of assessment; but the number may be increased hereafter, as in the wisdom of the City Council shall seem most conducive to the general interest and convenience.

Sec. 2. And be it further enacted, That the Council of the City of Washington shall consist of twelve members, residents of the city, and upwards of twenty-five years of age, to be divided into two chambers, the first chamber to consist of seven members, and the second chamber of five members; the second chamber to be chosen from the whole number of councillors elected, by their ballot. The City Council to be elected annually, by ballot, in a general ticket, by the free white male inhabitants of full age, who have resided twelve months in the city, and paid taxes therein the year preceding the election's being held: the justices of the county of Washington, resident in the city, or any three of them, to preside as judges of election, with such associates as the Council may, from time to time, appoint.

Sec. 3. And be it further enacted, That the first election of members for the City Council shall be held on the first Monday in June next, and in every year afterwards, at such place in each ward as the judges of the election may prescribe.

Sec. 4. And be it further enacted, That the polls shall be kept open from eight o'clock in the

morning till seven o'clock in the evening, and no longer, for the reception of ballots. On the closing of the poll, the judges shall close and seal their ballot-boxes, and meet on the day following in the presence of the marshal of the district, on the first election, and the Council afterwards, when the seals shall be broken, and the votes counted: within three days after such election, they shall give notice to the persons having the greatest number of legal votes, that they are duly elected, and shall make their return to the Mayor of the city.

Sec. 5. And be it further enacted. That the Mayor of the city shall be appointed, annually, by the President of the United States: he must be a citizen of the United States, and a resident of the city, prior to his appointment.

Sec. 6. And be it further enacted, That the City Council shall hold their sessions in the City Hall, or, until such building is erected, in such place as the Mayor may provide for that purpose, on the second Monday in June, in every year; but the Mayor may convene them oftener, if the public good require their deliberations. Three-fourths of the members of each Council may be a quorum to do business, but a smaller number may adjourn from day to day: they may compel the attendance of absent members, in such manner, and under such penalties, as they may, by ordinance, provide: they shall appoint their respective Presidents, who shall preside during their sessions, and shall vote on all questions where there is an equal division; they shall settle their rules of proceedings, appoint their own officers, regulate their respective fees, and remove them at pleasure: they shall judge of the elections, returns, and qualifications of their own members, and may, with the concurrence of three-fourths of the whole, expel any member for disorderly behaviour, or mal-conduct in office, but not a second time for the same offence: they shall keep a journal of their proceedings and enter the yeas and nays on any question, resolve, or ordinance, at the request of any member, and their deliberations shall be public. The Mayor shall appoint to all offices under the corporation. All ordinances or acts passed by the City Council shall be sent to the Mayor, for his approbation, and when approved by him, shall then be obligatory as such. But if the said Mayor shall not approve of such ordinance or act, he shall return the same within five days, with his reasons in writing therefor; and if three-fourths of both branches of the City Council, on reconsideration thereof, approve of the same, it shall be in force in like manner as if he had approved it, unless the City Council, by their adjournment, prevent its return.

Sec. 7. And be it further enacted, That the Corporation aforesaid shall have full power and authority to pass all by-laws and ordinances; to prevent and remove nuisances; to prevent the introduction of contagious diseases within the city; to establish night-watches or patrols, and erect lamps; to regulate the stationing, anchorage, and mooring of vessels; to provide for licensing and regulating auctions, retailers of liquors, hackney-

Acts of Congress.

carriages, wagons, carts, and drays, and pawn-brokers within the city; to restrain or prohibit gambling, and to provide for licensing, regulating, or restraining, theatrical or other amusements within the city; to regulate and establish markets; to erect and repair bridges; to keep in repair all necessary streets, avenues, drains, and sewers, and to pass regulations necessary for the preservation of the same, agreeably to the plan of the said city; to provide for the safe-keeping of the standard of weights and measures fixed by Congress, and for the regulation of all weights and measures used in the city; to provide for the licensing and regulating the sweeping of chimneys and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks that are to be made and used in the city; to sink wells, and erect and repair pumps in the streets; to impose and appropriate fines, penalties, and forfeitures for breach of their ordinances; to lay and collect taxes; to enact by-laws for the prevention and extinguishment of fire; and to pass all ordinances necessary to give effect and operation to all the powers vested in the Corporation of the City of Washington: *Provided*, That the by-laws or ordinances of the said Corporation, shall be in no wise obligatory upon the persons of non-residents of the said city, unless in cases of intentional violation of by-laws or ordinances previously promulgated. All the fines, penalties, and forfeitures, imposed by the Corporation of the City of Washington, if not exceeding twenty dollars, shall be recovered before a single magistrate, as small debts are, by law, recoverable; and if such fines, penalties, and forfeitures, exceed the sum of twenty dollars, the same shall be recovered by action of debt in the District Court of Columbia, for the county of Washington, in the name of the Corporation, and for the use of the City of Washington.

SEC. 8. *And be it further enacted*, That the person or persons appointed to collect any tax imposed in virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith: no sale shall be made unless ten days' previous notice thereof be given; no law shall be passed by the City Council subjecting

vacant or unimproved city lots, or parts of lots, to be sold for taxes.

SEC. 9. *And be it further enacted*, That the City Council shall provide for the support of the poor, infirm, and diseased of the city.

SEC. 10. *Provided always, and be it further enacted*, That no tax shall be imposed by the City Council on real property in the said city, at any higher rate than three quarters of one per centum on the assessment valuation of such property.

SEC. 11. *And be it further enacted*, That this act shall be in force for two years, from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, May 3, 1802.

Resolution authorizing the Secretary of State to furnish the members of both Houses with the laws of the Sixth Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be directed to cause to be furnished to each member of the two Houses of Congress, a copy of the laws of the Sixth Congress.

Approved, January 21, 1802.

Resolutions expressing the sense of Congress on the gallant conduct of Lieut. Sterret, the officers and crew of the United States schooner Enterprize.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That they entertain a high sense of the gallant conduct of Lieutenant Sterret, and the other officers, seamen, and marines, on board the schooner Enterprize, in the capture of a Tripolitan corsair, of fourteen guns and eighty men.

Resolved, That the President of the United States be requested to present to Lieutenant Sterret a sword, commemorative of the aforesaid heroic action; and that one month's pay be allowed to all the other officers, seamen, and marines, who were on board the Enterprize when the aforesaid action took place.

Approved, February 3, 1802.